

Addiction in the Australian legal system:

Findings and
recommendations
from a qualitative project

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Executive summary

This report details findings from an Australian Research Council (ARC)-funded project entitled ‘Addiction in the Australian legal system: A sociological analysis’ (DE160100134), undertaken between early 2016 and early 2019. The ARC-funded project in turn built upon and incorporated findings from an earlier pilot study conducted in 2013-2014 through the National Drug Research Institute in the Faculty of Health Sciences at Curtin University.

This project aimed to generate new insights into how alcohol and other drug ‘addiction’ featured in law, to examine how the language and concepts of addiction feature, and to identify the strengths, weaknesses and implications of these approaches, including across different areas of law. A key innovation of the project was a comparative analysis of approaches in Australia and Canada. A comparative analysis was undertaken in part because, over the last decade, a series of major Canadian cases dealing with alcohol and other drug problems including ‘addiction’ were decided. These decisions have implications for the social, health and economic outcomes of people who use alcohol and other drugs. The overall aims of the project were to advance understandings of legal responses to addiction in both countries and to inform legal responses to alcohol and other drug-related problems in Australia.

This report presents findings from three components of the project. These were: an analysis of legislation in which ‘addiction’ and/or ‘dependence’ feature; interviews with lawyers whose work involves addiction; and interviews with decision makers such as judges, magistrates and other statutory decision makers. A fourth component (analysis of case law) is dealt with in other publications. For the legislative component, relevant statutes and regulations were identified across all Australian jurisdictions by conducting searches on the open access Austlii database using a variety of search terms. As a result, thirty-six separate pieces of legislation and regulations were identified encompassing seventy-nine relevant provisions. These provisions were then analysed so as to determine which areas of law and jurisdictions used legislation including references to ‘addiction’ and/or ‘dependence’, for what purposes and whether the legislation defined the central object (e.g. ‘addiction’) as well as how. For the interview components, a total of 48 qualitative, in-depth interviews were conducted with Australian and Canadian lawyers (and Australian decision makers (judges, magistrates and other statutory decision makers such as tribunal members and members of parole boards)).

The interviews explored the nature of participants’ work, how alcohol and other drug issues featured in their work, how they conceptualised ‘addiction’, their legal strategies for dealing with alcohol and other drugs, the challenges they and their clients face in legal systems and the strengths and weaknesses of existing approaches to alcohol and other drugs (see Appendices 2 and 3 for the interview schedules).

This report presents key findings from these components and makes recommendations for practice, education and research.

Fortuitously, the research coincided with several major inquiries into drug law or drug-related issues across Australia. These included inquiries into drug law in Victoria, Western Australia and New South Wales (e.g. Parliament of Western Australia 2019; Parliament of Victoria 2018), major reviews of related laws (e.g. victims of crime compensation law in Victoria) and important cases, such as the case of ‘Ms A’, which was a coronial inquest into drug overdose deaths in Victoria (Inquest into the death of Ms A – Coroners Court of Victoria, 2017)). The project also coincided with relevant legal developments, such as the legalisation of cannabis in the Australian Capital Territory and the establishment of a medically supervised injecting room in North Richmond, Victoria. Accordingly, numerous submissions were given to these inquiries and reviews (including oral evidence), drawing on the research presented in this report.

Alongside this report and the aforementioned submissions, the project has generated several other outputs. These include: two books, several peer reviewed journal articles, conference presentations (including national and international keynote presentations), articles for media and numerous submissions to the aforementioned inquiries. A full list of these can be found at Appendix 1.

After the completion of the project, the Australian Drug Lawyers Network was established. The purpose of the network is to bring together lawyers and interested others, and to share information and knowledge regarding Australian drug law. The group is for those interested in issues including criminalisation, and how drugs play out in other areas of law such as family law, child protection and disability discrimination law. The network has a Twitter handle (@LawyersDrug). More information about the network can be requested from the author of this report.

Key findings of the project include:

- That addiction features in multiple areas of law (e.g. criminal law, family law, family violence proceedings [e.g. for intervention orders], disability discrimination law, social security law, crimes compensation law, other regulatory settings [e.g. admission and professional regulation of lawyers and doctors], medical/public health contexts [e.g. mandated treatment]);
- Across Australia, ‘addiction’ or ‘dependence’ feature in thirty-six separate pieces of legislation and regulations, with seventy-nine relevant provisions. Addiction most commonly appears in laws dealing with ‘public health’ matters such as mandated treatment or supervised injecting facilities, followed by ‘health regulation’ matters such as penalising practitioners for prescribing to drug dependent persons without authorisation or failing to notify particular agencies, followed by criminal law matters including the provision for drug treatment programs as part of sentencing;
- The legislation attaches significance to addiction and/or dependence for a range of different purposes and with different consequences. These approaches are sometimes at odds. For instance, in some areas of law, ‘addiction’ or ‘dependence’ may operate as the basis for a legal right or concession, whereas in others, it forms the basis for the removal of a legal right or concession afforded to others. In this sense, ‘addiction’ and ‘dependence’ have multiple and contradictory legal meanings. These differences – regarding how ‘addiction’ might be conceptualised and what it can or should afford – align with conceptualisations of and approaches to ‘addiction’ in other institutional settings and contexts, as discussed at length in other academic scholarship;
- Despite the fact that significance is attached to addiction and/or dependence in numerous laws, these terms are rarely defined in the legislation. An absence of definitions may result in uncertainty, greater subjectivity or arbitrariness and more inconsistency in the application of legislation, raising questions about equity, fairness and justice for those affected by the legislation mapped for this project;
- In legal practice, lawyers described alcohol and other drug issues, as well as ‘addiction’, surfacing in a much wider range of legal contexts and for a wider range of legal issues than appear in legislation. They also described ‘addiction’ as being ‘relevant’ to different problems and for a more extensive range of problems;
- The more widespread surfacing of alcohol and other drug issues, and the use of ‘addiction’ terminology and concepts in law is primarily due to two sets of practices described by lawyers. First, the language of ‘addiction’ may be *proactively asserted* by a party to a legal proceeding in circumstances where it was thought to be either strategically useful or even necessary to do so. Second, it may be *reactively asserted*, as where the fact of someone’s drug use becomes known in a legal proceeding and a strategic decision is made to respond to that revelation by constituting one’s use as an ‘addiction’. The use of language of ‘addiction’ often occurs because of a *strategic decision to introduce the language of addiction or key concepts of addiction into law*. In this sense, *legal strategy is central to the emergence of addiction in law*;
- Lawyers and decision makers describe having little or no training in alcohol or other drug dependence, say that they are unfamiliar with debates taking place in other fields about addiction and are unaware of the lack of consensus about contested meanings;
- Some decision makers express frustration about lawyers, suggesting that they are too conservative and lack creativity in their arguments. Several decision makers expressed concern about prohibitionist/strict approaches to drug law and were keen to see reforms, but wanted lawyers to be bold. These issues are not discussed in detail in this report but covered in more depth elsewhere (e.g. Seear, 2020);

- There were suggestions that lawyers should think about ‘addiction’ like they once thought about ‘gender’: as laden with stereotypes, and as shaped by cultural ideas, norms and practices. Decision makers encourage lawyers to take their cue from feminist advocates, who have challenged gendered stereotypes in areas such as family law and criminal law (e.g. where the credibility of victim witnesses has been questioned in sexual assault trials, or when allegations of family violence are raised). These issues are not discussed in detail in this report but covered in more depth elsewhere (e.g. Seear, 2020);
- Major concerns were raised about the potential for addiction language and concepts to be harmful or stigmatising, and questioning whether such terminology or concepts are strictly legally necessary or helpful;
- One major area of concern involves family violence and addiction, including the tendency of some lawyers to try and ‘explain’ or ‘excuse’ family violence as an effect of alcohol or other drug consumption. There are concerns about the ethics, politics and implications of this (especially for women and children);
- Skepticism about other kinds of addictions, particularly sex addiction. Particular concerns were raised about attempts to ‘explain’ or even ‘excuse’ violent, predatory or other sexually inappropriate kinds of behaviour (e.g. flashing) on the basis that it was caused by a sex addiction. Decision makers were especially skeptical about the idea that sex addiction was a ‘real thing’. There was less reflection, however, on whether this was a similar kind of ethical/political problem to alcohol or other drug addiction in the context of family violence. These issues are not discussed in detail in this report but covered in more depth elsewhere (e.g. Seear, 2020);
- There is some tension in lawyers’ and decision makers’ reflections on addiction: on the one hand, they view addiction as a real object that is ‘real’, ‘genuine’ or ‘already there’ (i.e. as something that exists outside of legal practice, the meaning of which precedes legal argument) while on the other hand, they see it as something devoid of inherent meaning, that is constructed via legal argument (i.e. made in practice);
- There is also some tension in how lawyers and decision makers understand the consequences of addiction, what needs to be addressed when dealing with addiction in legal contexts, and underlying key concepts of addiction. For instance, some see addiction as the cause of major social problems such as crime, and view those labelled as ‘addicts’ as untrustworthy, chaotic and irrational. Others raised concerns about the central focus placed on addiction/drugs/alcohol as the origin of social problems, and saw some of the problems typically associated with addiction as in fact effects of systemic failings. Examples include: imposing bail or parole conditions that cannot possibly be met (because of geography, or waiting lists), imposing expectations and conditions in child protection contexts that are also unrealistic (because of waiting lists, or because the services offered are culturally inappropriate), having siloed systems (e.g. that do not cater for people with a dual diagnosis). Depending on the setting and context the expectations of people labelled as ‘addicts’ can vary significantly, and be more or less impossible to comply with. These expectations range from: requiring people to remain abstinent, requiring people to merely show some ‘insight’ into their ‘problem’, requiring them to simply enrol in a program or requiring them to actually complete a program. These differences in approach and understanding have major implications for legal outcomes, including: for the separation of children and parents in child protection settings, and for the intensification of criminalisation. Some of these issues are not discussed in detail in this report but covered in more depth elsewhere (e.g. Seear, 2020).

Key recommendations

Key recommendations of the project are as follows:

1. Consideration should be given to whether the language of ‘addiction’ and/or ‘dependence’ is necessary or appropriate in legislation, especially as concerns have been raised about the potential for such language and associated concepts to stigmatise people who use alcohol and other drugs, including in ways that may generate or exacerbate poorer social, economic and health outcomes;
2. If the language of ‘addiction’ and/or ‘dependence’ must be retained in statutes, consideration should be given to whether such terms should be defined, and if so, how. In an associated sense, consideration should be given to whether there is some benefit in generating consistent approaches to these definitions across different statutes;
3. The strategies adopted by lawyers (e.g. to position clients as ‘addicts’ for strategic reasons and/or to position certain phenomena – such as family violence – as caused by addiction) should be seen as not only legal but ethical issues;
4. In legal practice, there is a need for more careful attention to the implications of characterising people as ‘addicts’, ‘alcoholics’ or similar, especially in circumstances where clients are not told that this is how their use of alcohol or other drugs will be characterised, or where they may be unaware that there are alternatives available to them;
5. There is a need for more research to be undertaken on the ethical and political dimensions of legal addiction-attribution, including research with the people who are most directly affected by the practices described in this report;
6. Law schools should develop modules so that law students can learn more about alcohol and other drugs in general and debates about ‘addiction’ in particular, including the relationship between legal practices and alcohol and other drug-related stigma. These modules should be prepared in consultation with experts in the field including people who use or who have used drugs and peak peer organisations (e.g. Harm Reduction Victoria, NUAA, AIVL);
7. Although modules on alcohol and other drugs could be incorporated into numerous law subjects the most appropriate locations are in clinical legal education and legal ethics;
8. Judicial colleges should give consideration to whether existing judicial education on addiction is sufficient, including whether there is value to decision makers being exposed to literature on alcohol and other drug-related stigma.

Aims and background

The *National Drug Strategy 2017-2026* is the overarching policy document for drug policy in Australia (Department of Health, 2017). The strategy articulates several goals including reducing the adverse social, economic and health consequences associated with alcohol and other drugs and avoiding policies and practices that ‘unintentionally further marginalise or stigmatise people who are at higher risk of experiencing alcohol, tobacco and other drug related harm’ (Department of Health, 2017: 26).

Australian governments are increasingly looking to law reform as a way of dealing with these challenges. In recent years, for example, ‘one punch laws’ emerged as a key part of the policy response to so-called ‘alcohol-fuelled violence’. Similarly, Victorian inquiries into methamphetamine and drugs recommended that specialist Drug Courts be rolled out across the State (Parliament of Victoria, 2018; Law Reform Drugs and Crime Prevention Committee, 2014). Such responses recognise the fundamental role that the law can play in reducing alcohol and other drug-related harms.

However, the law might also generate, magnify and exacerbate such harms. It is capable of producing unintended, adverse social, economic and health consequences. This includes stigma (Seear, Lancaster & Ritter, 2017). Within the wider context of how the law deals with alcohol and other drug issues, there are several matters that might be studied, including how alcohol and other drugs are approached across different areas of law, whether there are tensions in approaches and the strengths and weaknesses of different approaches. The more specific question of how ‘addiction’ is understood by those working within legal systems, how it features and with what effects, is also important.

Understanding behaviour through the prism of ‘addiction’ is a relatively recent phenomenon (Room, 2003; Levine, 1978). Importantly, however, the language of ‘addiction’ is increasingly common, used in a wide range of settings and institutions (see Sedgwick, 1993). Although the language of addiction is widespread, there is a lack of consensus regarding what the term actually means, as well as the key concepts that underpin it (Carter et al., 2014; Heim et al., 2014; Karasaki et al., 2013). For instance: do so-called ‘addicts’ have limited capacity to control their behaviour, or is habitual drug use a choice? Is addiction a ‘disease’ for which addicts bear little or no responsibility? Should addiction be treated as a disability? Should addicts be punished and jailed, or offered treatment? What is the relationship, if any, between consumption of alcohol and other drugs and other phenomena such as intimate partner violence?

For some years, courts have been asked to consider questions such as these, in relation to both alcohol and other drugs and other behaviours and activities increasingly described as ‘addictions’. These issues have played out in diverse contexts, including in personal injury lawsuits pertaining to tobacco, pharmaceuticals, food and video games; lawsuits involving the liability of casinos to cover heavy losses sustained by gamblers; in family law disputes about parents who use drugs; and public health lawsuits regarding access to particular treatments for people labelled as ‘addicts’. The way that courts deal with alcohol and other drug use and ‘addiction’ is important for multiple reasons. First, what goes on in those cases has implications for the people directly involved: victims and perpetrators of crime, parents and children, businesses and governments. They also have implications for how we understand choice, blame, responsibility and agency, as where, for instance, violence against women is conceptualised as being linked to, ‘fuelled by’ or otherwise associated with alcohol or other drug addiction.

Such cases can also have a direct impact on the nature and scale of alcohol and other drug-related harms. An example of how this happens comes out of Canada. In recent years, the Canadian Supreme Court has handed down a series of important decisions the ‘nature’ and ‘effects’ of addiction. The best known of these is the *Insite* case, formally known as *Canada (Attorney General) v PHS Community Services Society (2011) 3 SCR 134*. The *Insite* case was about the legality and status of a supervised drug injecting facility located in Vancouver. The Supreme Court concluded that drug addiction was a ‘disease’ rather than a choice, and that people who injected drugs had a right to access services through Insite. Many thousands of people who inject drugs now attend Insite every year, accessing clean needles and syringes, connecting with treatment, harm reduction, social and housing services. Research confirms that Insite has played a substantial role in reducing fatal drug overdoses in Vancouver, and in the reduction of new infection for hepatitis C and HIV (Carter & MacPherson, 2013; Marshall et al., 2011).

Although legal approaches to addiction can generate benefits – as happened through the *Insite* case, these approaches may also come at a cost. In particular, in classifying people who use drugs as ‘addicts’, courts might label those individuals as suffering from a disease. There is the potential for this designation might be stigmatising (Brook & Stringer, 2005). In other words, the medicalisation of phenomena does not of itself guarantee that people will be treated more favourably (Brownscombe, 2004); in fact, they may be treated differently or less favourably if they are

understood to have a 'sickness' that compromises their capacity or agency in some way, or if it authorises interventions of some kind. For example, the use of coercive practices and paternalistic policies – including involuntary treatment, detention and sterilisation – may follow (Spivakovsky, Seear, & Carter, 2018; Lucke & Hall, 2012). In other words, there can be numerous implications – good and bad – of what the law does with and to those labelled as experiencing an 'addiction'.

Researchers outside of law have been cognisant of these issues for many years. Much non-legal scholarship looks at the use of addiction language and concepts of addiction in service provision, policy, drug education, alcohol and other drug counselling and more (e.g. Fomiatti, Moore, & Fraser, 2019; Fraser & Ekendahl, 2018; Fraser, valentine, & Ekendahl, 2018; Savic, et al. 2018; Dilkes-Frayne & Duff, 2017; Farrugia, 2017; Dwyer & Fraser, 2016a; Dwyer & Fraser, 2016b; Rhodes, et al. 2016; Moore, Fraser, Törrönen, & Eriksson, 2015; Seear, 2015; Fraser, Moore, & Keane, 2014; Karasaki et al., 2013; Dwyer & Moore, 2013; Fraser, 2015; Fraser & Moore, 2011; Fraser & Seear, 2011; Fraser & valentine, 2008; Moore & Fraser, 2006; Room, 2006; Keane, 2002). In this work, scholars have drawn attention to the implications that different addiction concepts have, especially for those characterised as experiencing addiction. Generally, this work critically examines drug 'effects' and addicted 'realities'. Rather than accepting that realities exist independent from our actions and prior to our attempts to know them, these approaches, informed by feminist, poststructuralist and science and technology studies theorists, instead suggest that realities are made in practice. In order to understand how objects and subjects (people) come to be, it is important to attend to the specific practices and processes by which realities are enacted, formulated and maintained.

Fraser, Moore and Keane (2014: 5-6) argue that 'the kind of problem that addiction is depends on institutional location and the ontological politics of the substance involved'. There is a need, in other words, to study how addiction is dealt with across different institutional settings and what those different settings do with addiction. Surprisingly, there has been little work that responds to this call and seeks to study addiction in one of the most important institutional contexts: the law.

This project therefore sought to explore these issues. It explored how alcohol and other drug issues feature in law, examined how the language and concepts of addiction feature, and identified the strengths, weaknesses and implications of these approaches. Given the importance of legal developments in Canada, such as the aforementioned *Insite* case, the project also turned to Canada for insights.

The project was guided by the following questions:

1. In what areas of Australian and Canadian law does addiction operate?
2. What concepts of addiction do key decision-makers (lawyers and other decision makers such as judges) use in their work?
3. What concepts of addiction appear in legislative frameworks, statutes, case law and other legal materials?
4. What are the key assumptions about addiction, agency and responsibility in use in these materials?
5. What are the implications of these assumptions for social, economic and health outcomes?
6. What are the differences and similarities between Australian and Canadian approaches to addiction?
7. What are the strengths and weaknesses of each approach?



Method

In order to examine how alcohol and other drug issues including addiction featured in law, a combination of methods were used. These were textual analysis, qualitative interviewing and a final national workshop – along with a novel theoretical approach and an international comparative component. Three main datasets were collected for this project.

First, the project collected and analysed Australian legislation that referred to ‘addiction’ and/or ‘dependence’ and associated materials, such as parliamentary second reading speeches. These are parliamentary speeches that accompany proposed new laws. They often provide additional insights into the purposes of the proposed law and – where alcohol and other drugs are concerned – how problems are conceptualised and which solutions are believed necessary, as well as why. These provisions were accessed through searches of the Australian legal database Austlii. The specific aim was to locate legislation dealing with ‘addiction’ or ‘dependence’, as these are the two terms that are most commonly used in Australia to describe apparently ‘problematic’ drug use. The mapping and analysis of legislation dealing with other behaviours or conditions (e.g. ‘intoxication’ as opposed to ‘addiction’) was not undertaken because a comprehensive analysis of those provisions has already been undertaken elsewhere (e.g. Quilter, McNamara, Seear & Room, 2018; Quilter, McNamara, Seear & Room, 2016). Once relevant laws were located, they were assessed with a view to determining: which terminology was used, which areas of law these references appeared in, whether they were defined and if so, how. In asking these questions, the project used a similar approach to that used in the aforementioned research mapping and analysing the significance of intoxication in Australian law (Quilter, McNamara, Seear & Room, 2018; Quilter, McNamara, Seear & Room, 2016).

Second, 48 qualitative, in-depth interviews were conducted, with Australia and Canadian lawyers and Australian decision makers (judges, magistrates and other statutory decision makers such as tribunal members and members of parole boards). The interviews were confidential, digitally recorded, transcribed verbatim, and conducted according to interview schedules covering themes including:

- definitions of addiction;
- the range of concepts or models of addiction participants draw on in their work;
- the relevance of statutes and/or case law from within and outside the participants’ own fields of expertise;
- participants’ experiences of and needs regarding education in understandings of AOD and addiction;
- participants’ views on the strengths and weaknesses of existing approaches; and
- public policy implications of various legal approaches to addiction.

The complete interview schedules can be located in Appendices 2 and 3.

Third, cases from the Australian High Court dealing with ‘addiction’ or ‘dependence’ were collected and analysed. These were supplemented with analyses of cases in specific areas of law that emerged from the interviews as particularly relevant to practice.

Although the bulk of the research was undertaken between April 2016 and April 2019, the project in fact commenced with a pilot study undertaken in 2013–14. The pilot was part of a collaboration with then Australian Research Council Future Fellow Suzanne Fraser. The pilot had two components: a preliminary mapping exercise identifying important legal realms in which addiction operates, and an in-depth interview component, comprised of interviews with lawyers in Australia and Canada. Interviews undertaken in the earlier pilot (n=14) were combined with interviews undertaken in the later, larger project (n=34) to comprise the final, complete interview dataset (N=48). The pilot was approved by the Curtin University Ethics Committee and the subsequent project was approved by the Monash University Human Ethics Research Committee, project number: CF16/1662 – 2016000868. All participants have been assigned pseudonyms.

At the completion of the project, a final workshop was held. This workshop brought together senior lawyers, judges and scholars working across different legal realms and jurisdictions to discuss the implications of the research findings for their practice. Findings were presented for reflection and discussion.

Findings

The following sections discuss the project's key findings and recommendations. They are organised into four parts, as follows:

1. Addiction in Australian legislation
2. How alcohol and other drug addiction surfaces in legal practice
3. Alcohol, drugs and family violence
4. Concerns regarding existing approaches

The report concludes with several recommendations to improve legal approaches to alcohol and other drugs and to 'addiction' and/or 'dependence'.

1. Addiction in Australia legislation

Across Australia, references to some kind of ‘problematic’ drug use, broadly defined, feature in thirty-six separate pieces of legislation and regulations, with seventy-nine relevant provisions. These provisions vary in several key respects. First, the terminology used to describe problematic use differs. Second, the legal contexts (or areas of law) within which such references appear are varied. Third, there are major variations in definitional approaches, with some statutes attaching significance to the fact of ‘addiction’ but without defining it, while others define such behaviours in quite different ways, even when the same terminology (e.g. ‘dependency’) is being used.

The number of laws that deal with ‘addiction’ or ‘dependence’

Initial results were refined for provisions that refer to ‘addiction’ or ‘dependence’ in reference to a person rather than in reference to substances themselves. As a result, thirty-six separate pieces of legislation or regulations were identified encompassing seventy-nine relevant provisions in effect as of 2017. Of the provisions identified, the following terms were used to describe the behaviour the subject of the legislation (in order of frequency):

- ‘Drug-dependent’ / ‘state of dependence’ / ‘dependency’;
- ‘Severe substance dependence’;
- ‘Addicted’ / ‘addiction’; and
- ‘Serious addiction’.

The significance attached to ‘addiction’ or ‘dependence’

Overall, the provisions identified could be categorised as dealing with (in order of frequency):

- ‘Public health’ matters such as mandated treatment or safe injecting facilities;
- ‘Health regulation’ matters such as penalising practitioners for prescribing to drug dependent persons without authorisation or failing to notify particular agencies;
- Sentencing matters including the provision for drug treatment programs as part of sentencing;
- Substantive criminal offences, either defining drug dependence so as to establish ‘drugs of dependence’ or noting dependence or addiction as a mitigating factor;
- Corrections and parole matters in relation to drug dependent persons;

- Special circumstances for infringements;
- Anti-discrimination law; and
- Proceeds of crime matters.

The significance attached to ‘addiction’ or ‘dependence’ varied considerably according to statute. In other words, the purpose for which these terms appeared in law differed, and the implications or consequences that might flow from such references also varied. In some instances, for example, ‘addiction’ or ‘dependence’ sometimes appeared in legislation to clarify another term, whereas in other instances it was a key statutory element from which important consequences could flow. The main purposes included:

- As an element of a criminal offence;
- As a factor in criminal sentencing (including in ways that might generate diverse outcomes);
- As the basis for a legal right or concession;
- As the basis for the removal of a legal right or concession afforded to others;
- As the basis for mandated or compulsory treatment;
- As the basis for determining access to medication.

In some instances, these purposes overlap or can be found in more than one Act. For example, sentencing provisions that allow for ‘compulsory’ treatment attach significance to addiction in two senses: for criminal sentencing purposes and as the basis for mandated or compulsory treatment.

In order to illustrate some of these purposes, examples are discussed below.

Examples of how significance is attached to ‘addiction’ or ‘dependence’

The *Criminal Code* (Cth) provides an example of how ‘addiction’ figures in the criminal law, through informing an element of a criminal offence. Under the Code, it is an offence to import a psychoactive substance’, where a ‘psychoactive substance’ is defined as a substance with the ‘capacity to induce a psychoactive effect’. Section 320.1 of the Code defined ‘psychoactive effect’ as:

- (a) stimulation or depression of the person’s central nervous system, resulting in hallucinations or in a significant disturbance in, or significant change to, motor function, thinking, behaviour, perception, awareness or mood; or
- (b) causing a state of dependence, including physical or psychological addiction.

“ The majority of Acts do not define key terms such as ‘addiction’. This is important given the significance sometimes attached to ‘addiction’ and ‘dependence’ ... and because of the substantial consequences that can sometimes follow.

In this example, ‘addiction’ may be caused by a psychoactive effect, which is in turn induced by a psychoactive substance. Although not the only way in which the offence of importation might be established, addiction in this example plays an important role in establishing the foundations of a criminal offence.

In contrast, the *Severe Substance Dependence Treatment Act 2010* (Vic) establishes a detailed legislative regime for the management of individuals adjudged to be experiencing ‘severe substance dependency’. In this example, ‘dependency’ is central to the Act and appears in multiple provisions. Significant consequences flow if someone is adjudged to be experiencing severe ‘dependency’, including the possibility of detention, assessment and treatment non-voluntarily.

Other provisions attached different significance to drug dependence or addiction. For example, section 408 of the *Crimes (Sentencing) Act 2005* (ACT) states that a pre-sentence report is required if ‘the offender is addicted to, or misuses, alcohol or a controlled drug’. Similarly, section 106B of the *Crimes (Administration of Sentences) Act 1999* (NSW) outlines the objects of compulsory drug treatment for offenders as being, among other things: ‘to provide a comprehensive program of compulsory treatment and rehabilitation under judicial supervision for drug dependent persons who repeatedly resort to criminal activity to support that dependency’.

A significant number of the provisions dealt with the regulation and prescriptions of drugs of dependence and licensing requirements to prescribe certain drugs. For example, Regulation 49 of the *Drugs Poisons and Controlled Substances Regulations 2006* (Vic) provides a punishment of up to 100 penalty units administers or prescribes a drug of dependence to a person ‘merely for the purpose of supporting the drug dependence of that person.’ Moreover, some provisions dealt with notifying particular agencies that a person is drug dependent. For example, section 33 of the *Drugs Poisons and Controlled Substances Act 1981* (Vic) notice to be sent to the secretary when a practitioner has reason to believe that one of his or her patients is a drug-dependent person.

Finally, some provisions referenced addiction/dependence for a unique circumstance, such as section 3 of the *Infringements Act 2006* (Vic). It lists ‘serious addiction’ as one of the criteria for applying for ‘special circumstances’ in challenging a fine under the Act. In this case, if a person has a special circumstance, they may have their infringements waived or the amount owing

may be reduced. The specific provision of the Act states that a ‘special circumstance’ includes:

a serious addiction to drugs, alcohol or a volatile substance within the meaning of section 57 of the *Drugs, Poisons and Controlled Substances Act 1981* where the serious addiction results in the person being unable;

- (i) to understand that conduct constitutes an offence; or
- (ii) to control conduct which constitutes an offence.

In this instance, addiction is understood to lead to disorders of thinking and/or control, but in ways that may form the basis of a legal right or concession.

In contrast, the *Anti-Discrimination Act 1977* (NSW) precludes discrimination against people on the basis of race, sex, and other grounds, in certain circumstances. Addiction is mentioned once in the Act (at section 49PA), providing a specific exception from anti-discrimination protections for ‘persons addicted to prohibited drugs’. In other words, in specific contexts, it is lawful to discriminate against persons addicted to prohibit drugs. This is an example of a provision that forms the basis for the *removal* of a legal right or concession afforded to others.

As these various examples show, ‘addiction’ and ‘dependence’ are constituted in legislation in a range of ways; there are some overlaps, in purpose and approach, as well as tensions.

Definitions of ‘addiction’ and ‘dependence’

There was considerable variety in approaches to defining dependence and addiction. The majority of the Acts (n=22) do not define these terms. This is important given the significance sometimes attached to ‘addiction’ and ‘dependence’, as discussed in the previous section, and because of the substantial consequences that can sometimes follow.

Of the Acts (n=14) that did attempt to define addiction or dependence:

- 12 formulated a definition through characteristics or behaviours; and
- 2 referred to other laws in the jurisdiction for definitions. For example: ‘drug-dependent person as defined by the *Medicines, Poisons and Therapeutic Goods Act*’.

The Acts in force that provided definitions are:

1. *Drugs of Dependence Act 1989* (ACT);
2. *Drug and Alcohol Treatment Act 2007* (NSW);
3. *Medicines, Poisons and Therapeutic Goods Act 2012* (NT);
4. *Misuse of Drugs Act 1990* (NT);
5. *Drug Misuse Act 1986* (QLD);
6. *Health (Drugs and Poisons) Regulation 2006* (Qld);
7. *Poisons Act 1971* (TAS);
8. *Severe Substance Dependence Treatment Act 2010* (VIC);
9. *Medicines, Poisons and Act 2014* (WA);
10. *Alcohol and Drug Dependency Act 1968* (TAS);
11. *Infringements Act 2006* (VIC);
12. *Poisons and Therapeutic Goods Act 1966* (NSW).

Defining 'addiction'

Only one law attempted to define 'addiction'. That was the *Medicines, Poisons and Therapeutic Goods Act 2012* (NT). This is despite the fact that six statutes reference some variant of 'addiction' or 'addicted' in their provisions. Section 5 of the Act notes that:

'addiction' to a regulated substance, means a state of physiological or psychological dependence on, or increased tolerance to, the habitual and excessive use of the substance, and includes pain and other symptomatic indications arising specifically from withdrawal of the substance.

Some of the key terms incorporated within this definition ('dependence', 'tolerance', 'habitual' use, 'excessive' use and 'withdrawal') were not defined further. In other words, the only statute that defined addiction

Defining 'dependence'

Twenty-six statutes refer to drug or alcohol 'dependency' in some fashion, however only nine statutes actually define the terms used. Most definitions of 'drug-dependent person', 'state of dependence' or 'dependency' include physical or mental withdrawal,¹ as well as apparent or implied impaired control of alcohol or other drug consumption,² as criteria. For example, the *Drugs of Dependence Act 1989* (ACT) provides for certain drug offences. Section 2 of the Act defines a 'drug dependent person' as:

a person with a condition –

- (a) who, as a result of the administration of the drug or substance, demonstrates, in relation to the person's use of the drug or substance –

- (i) impaired control; or
 - (ii) drug-seeking behaviour that suggests impaired control; and
- (b) who, as a result of the cessation of the administration of the drug or substance, is likely to experience symptoms of mental or physical distress or disorder.

'Impaired control', 'drug-seeking behaviour' and 'mental or physical distress or disorder' are not further defined in the Act.

A similar approach is taken to defining 'drug-dependent person' under the *Misuse of Drugs Act 1990* (NT), *Drug Misuse Act 1986* (Qld) and *Health (Drugs and Poisons) Regulation 2006* (QLD). All of these require: impaired control or behaviour which suggests impaired control; and physical distress or disorder following the cessation of use. Again, such terms are not further defined.

Other definitions of dependence incorporated references to an uncontrollable desire or craving.³ For example, Section 27 of the *Poisons and Therapeutic Goods Act 1966* (NSW) defined a 'drug dependent person' as:

a person who has acquired, as a result of repeated administration of:

- (a) a drug of addiction, or
 - (b) a prohibited drug within the meaning of the *Drug Misuse and Trafficking Act 1985*,
- an overpowering desire for the continued administration of such a drug.

A unique approach is taken to the definition of 'alcohol dependency' under the *Alcohol and Drug Dependency Act 1968* (TAS), which is defined as a person who:⁴

consumes alcohol to excess and –

- (a) is thereby dangerous at times to himself or others or incapable at times of managing himself or his affairs; or
- (b) shows prodromal signs of becoming so dangerous or so incapable.

1. Section 2(a)(i), *Drugs of Dependence Act 1989* (ACT); Section 5, *Drug and Alcohol Treatment Act 2007* (NSW); Section 5, *Medicines, Poisons and Therapeutic Goods Act 2012* (NT); Section 3, *Misuse of Drugs Act 1990* (NT); Section 4, *Drug Misuse Act 1986* (QLD); Section 5, *Health (Drugs and Poisons) Regulation 2006* (QLD); Section 3, *Poisons Act 1971* (TAS); Section 5, *Severe Substance Dependence Treatment Act 2010* (VIC); Regulation 3, *Drugs of Addiction Notification Regulations 1980* (WA).

2. Section 2(a)(i), *Drugs of Dependence Act 1989* (ACT); Section 5, *Drug and Alcohol Treatment Act 2007* (NSW); Section 37(1), *Misuse of Drugs Act 1990* (NT); Section 4, *Drug Misuse Act 1986* (QLD); *Severe Substance Dependence Treatment Act 2010* (VIC).

3. Section 28, *Poisons and Therapeutic Goods Act 1966* (NSW); Section 3, *Poisons Act 1971* (TAS).

4. Section 3, *Alcohol and Drug Dependency Act 1968* (TAS).

Under section 77 of the *Medicines, Poisons and Act 2014* (WA), a ‘drug-dependent person’ means a person who:

has acquired, as a result of repeated administration of drugs of addiction or Schedule 9 poisons, an overpowering desire for the continued administration of a drug of addiction or a Schedule 9 poison.

Overall, dependence is defined in diverse ways across law incorporating several different characteristics including impaired control, desire, harm to others, unclear thinking and withdrawal. On the majority of occasions these terms or concepts are not defined or further explicated.

‘Severe Substance Dependence’

Three statutes referred to ‘severe substance dependence’. These were: the aforementioned *Severe Substance Dependence Treatment Act 2010* (VIC), the *Sentencing Act 1991* (VIC) and the *Drug and Alcohol Treatment Act 2007* (NSW). Two of these provided a definition without the legislation (the *Sentencing Act 1991* merely noted ‘as defined in the *Severe Substance Dependence Treatment Act 2010*...’). Both statutes included the following criteria in their definition of ‘severe substance dependence’:

- (a) the person has a tolerance to a substance; and
- (b) the person shows withdrawal symptoms when the person stops using, or reduces the level of use of, the substance; and
- (c) the person is incapable of making decisions about his or her substance use and personal health, welfare and safety due primarily to the person’s dependence on the substance.

As such it appears that ‘tolerance to a substance’ is the defining criteria separating ‘severe drug dependence’ from ‘drug dependence’ in these statutes.

‘Serious Addiction’

Only one statute referred to ‘serious addiction’. This is the aforementioned section 3 of the *Infringements Act 2006* (VIC) which defines ‘special circumstances’


as including ‘serious addiction’. As noted in section 1.3, the Act sets out two potential consequences of addiction, one of which must be satisfied for the applicant to avail themselves of the legal concessions conferred therein. The Act does not, however, define addiction itself, nor does it indicate how a ‘serious’ addiction might be differentiated from an ‘addiction’.

Implications of legislative approaches

This section of the report discusses the results of the legislative mapping component of the project. Numerous Acts utilise the language of ‘addiction’ or ‘dependence’, for different purposes and with diverse consequences. These approaches are sometimes at odds. In this sense, ‘addiction’ and ‘dependence’ have multiple and contradictory legal meanings, including some which are in tension with one another.

Despite the fact that significance is attached to addiction and/or dependence in numerous laws, these terms are rarely defined in the legislation. Where terms are defined they are often defined very differently, resulting in divergent approaches to addiction and dependence. It is important to acknowledge that terms such as drug ‘addiction’ or ‘dependence’ remain heavily contested across the medical and social sciences. In this regard, the findings of this project align with conceptualisations of and approaches to ‘addiction’ in other institutional settings and contexts, as discussed at length in other academic scholarship, including some mentioned in the aims and background section of this report. It may not be possible (nor even desirable) for laws to have conceptual consistency and certainty, given this contestation and ongoing debate. Nevertheless, in law, an absence of definitions may result in uncertainty, greater subjectivity or arbitrariness and more inconsistency in the application of legislation. The widespread lack of definitional specificity and clarity, including in circumstances where much is at stake for individuals, families and communities, is important. This raises questions about whether the law can be reformed in ways that provide more certainty, consistency and fairness for those affected.

“Overall, dependence is defined in diverse ways across law incorporating several different characteristics including impaired control, desire, harm to others, unclear thinking and withdrawal. On the majority of occasions these terms or concepts are not defined or further explicated.”



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Another key issue is language. Outside legal contexts, there is an increasing recognition that the use of certain terms including ‘addiction’ can be stigmatising. There have been numerous attempts in recent years to reform the use of language within alcohol and other drug contexts, or to remove the use of certain terms altogether. This includes attempts under the Obama Administration during the course of this project (Office of National Drug Control Policy, 2017). A specific resource detailing the relationship between language and stigma has been developed in Canada (British Columbia Centre for Disease Control and Toward the Heart, 2017), and in Australia, the Network of Alcohol and Other Drug Agencies (NADA) and the NSW Users and AIDS Association (NUAA) joined together to produce a set of best-practice language guidelines for non-government alcohol and other drug organisations (Network of Alcohol and Other Drug Agencies and the NSW Users and AIDS Association, 2018).

That resource calls for a move away from terms like ‘addict’ and ‘alcoholic’ on the basis that person-centred language is more appropriate (e.g. ‘person who use drugs’), less limiting or all-consuming, and less likely to reinforce negative stereotypes of people who consume substances. The AOD (Alcohol and Other Drugs) Media Watch consortium has similarly developed and released a set of guidelines (AOD Media Watch, 2017). They differ from some of the aforementioned examples in that they are directed specifically towards the media and address issues that exceed language (e.g. the importance of accuracy in reporting). Nevertheless, all of these examples are underpinned by a recognition of the counterproductive nature of stigma in the alcohol and other drug field, the strong and well-documented relationship between stigma and reduced social, economic and health outcomes (e.g. Lancaster, Seear & Ritter, 2018; Fraser, et al., 2017; Lloyd 2013, 2010; Radcliffe & Stevens, 2008; Room, 2005) and the importance of eradicating such stigma.

The eighth recommendation of the aforementioned Victorian parliamentary inquiry into drug law also dealt with the question of language. That recommendation was that:

The Victorian Government develop specific guidelines on the use of appropriate, objective and non-judgemental language regarding substance use disorders, addictions and those who use drugs for public policy-makers, law enforcement agencies,

and health care professionals. The Government should consult with the appropriate agencies to ensure the guidelines are implemented throughout the working practices of these identified groups. In addition, the guidelines be conveyed to the media and non-government agencies. (Parliament of Victoria, 2018: xiv)

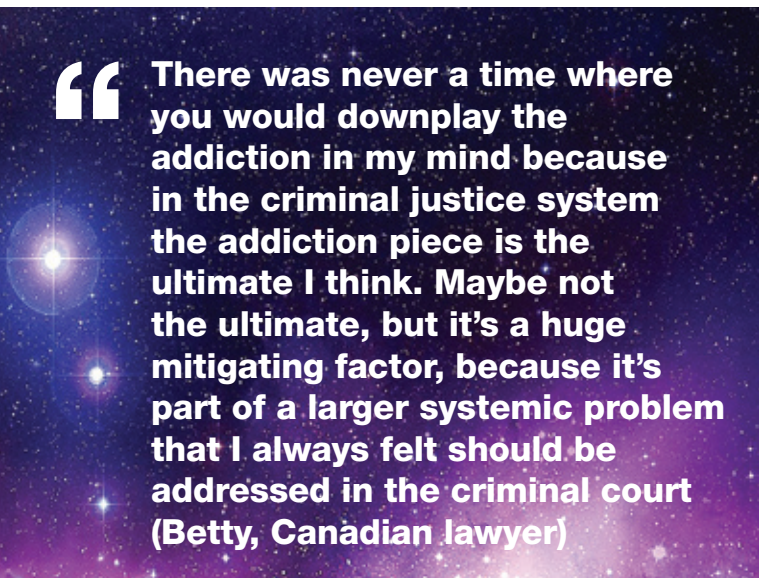
A set of guidelines was developed and released in 2019 (Alcohol and Drug Foundation, 2019). Although they were principally designed with specific institutional contexts in mind, these and the other language guidelines are potentially relevant in legal settings. In law, however, some language and concepts which might be considered problematic appears in – albeit frequently undefined or under defined – making it harder to change. Nevertheless, the use of such terminology in law (including in legislation with putatively therapeutic purposes) is at odds with shifting understandings of alcohol and other-drug related stigma and the need for associated changes in our nomenclature.

The question of whether to tweak legislation in light of the growing concerns about stigma is an important one, not just for past (existing) laws but also for future ones. Numerous new Acts were introduced, being proposed in parliament or otherwise under discussion during the course of this project. These included proposals to: mandate alcohol and other drug treatment for young people in South Australia, and to mandate drug testing and treatment for welfare recipients. During the course of this research, the Victorian Labor government also established a supervised injecting room (on a trial basis) in North Richmond. In these and other cases, different terms pertaining to problematic drug use were in circulation, including addiction. For future bills, therefore, consideration should be given to whether the language of ‘addiction’ and/or ‘dependence’ is necessary or appropriate, especially as concerns have been raised about the potential for such language and associated concepts to stigmatise people who use alcohol and other drugs, including in ways that may generate or exacerbate poorer social, economic and health outcomes. If the language of ‘addiction’ and/or ‘dependence’ must be included in such statutes, consideration should be given to whether such terms should be defined, and if so, how. In an associated sense, consideration should be given to whether there is some benefit in generating consistent approaches to these definitions across different statutes.

2. How alcohol and other drug addiction surfaces in legal practice

As noted earlier, the in-depth interviews explored a wide range of issues including how alcohol and other drugs features in law, how ‘addiction’ features in law and reflections on the strengths and weaknesses of these approaches. This section of the report focuses primarily on the question of how alcohol and other drugs and ‘addiction’ feature in legal practice from the perspectives of the lawyers interviewed.

Importantly, lawyers described alcohol and other drug issues, as well as ‘addiction’, surfacing in a much wider range of legal contexts and for a much wider range of legal issues than we see in legislation. They also described ‘addiction’ as being ‘relevant’ to different problems and for a more extensive range of problems. These discrepancies arise primarily because of two sets of practices.



“ There was never a time where you would downplay the addiction in my mind because in the criminal justice system the addiction piece is the ultimate I think. Maybe not the ultimate, but it’s a huge mitigating factor, because it’s part of a larger systemic problem that I always felt should be addressed in the criminal court (Betty, Canadian lawyer)

The importance of legal strategy in accounts of alcohol, drugs and ‘addiction’

The first is that the language of ‘addiction’ may be *proactively asserted* by a party to a legal proceeding in circumstances where it was thought to be either strategically useful or even necessary to do so. The second is that it may be *reactively asserted*. According to lawyers, for example, once the fact of someone’s drug use becomes known in a legal proceeding, a strategic decision might be made to respond to that revelation by developing an argument designed to manage one’s drug use by constituting it as a problem (or even illness) in the form of an ‘addiction’. In both cases, addiction finds its way into legal contexts as a result of legal strategy and because it is adjudged helpful or necessary to do so.

Alcohol and other drugs were often assumed to be relevant because of ideas that lawyers anticipated that decision makers would hold about them, which included the assumption that in some settings, such as family law, consumption of any substances would automatically be seen as problematic. In this respect, most lawyers believed that there was a need to ‘frame’ a person’s alcohol or other drug use in ways that would alleviate the (anticipated) concerns of decision makers. Importantly, the use of the language of ‘addiction’ often occurs because of *a strategic decision to introduce the language of addiction or key concepts of addiction into law*. In this sense, *legal strategy is central to the emergence of addiction in law*. (These issues are discussed in more detail in Seear, 2020; Seear, 2017).

Key factors that shape legal strategies associated with alcohol, drugs and ‘addiction’

These processes of decision-making were described in detail by several of the lawyers interviewed for the project. As one of the Australian lawyers interviewed for the project, Fern, explained, the decision about how to approach alcohol or other drug use was a strategic one, shaped in part by which magistrate or judge you might be appearing in front of, and what you knew about their views and approach, based on experience. As she explained:

you make a call with the particular magistrate or judge to what extent, if at all, you bring up information, whether it becomes a mitigating factor or something that they would see as an aggravating factor. [...] And that’s often either because you know [from experience] that the particular magistrate will ascribe a certain approach or have a particular gut instinct reaction, or sympathy.

Betty, a Canadian lawyer, was unequivocal. In her experience, working in criminal law, it was *always* a sound strategy to position drug use as an ‘addiction’. She explained:

There was never a time where you would downplay the addiction in my mind because in the criminal justice system the addiction piece is the ultimate I think. Maybe not the ultimate, but it’s a huge mitigating factor, because it’s part of a larger systemic problem that I always felt should be addressed in the criminal court. Saying, ‘Look, we have problems out there and this person ended up in here for whatever it was’, stealing a steak from the store or whatever petty crime that they were alleged to have done and they probably did do. So the addiction piece was critical to [the case] strategically.

drugs are evil, you know, in the eyes of the court. But if you can say: ‘Oh, they are evil, and look how evil they’ve been to my client, my client has been completely whipped to the gutter with these drugs, and can’t get up, but he’s trying – he’s on this, he’s on a methadone program, or he wants to be on there’. You know that’s more of a sob story. (Maxwell, Australian lawyer)

In these cases, there was often a perceived need to collapse drug use and addiction together. As Canadian lawyer Simone explained, ‘It is strategic to frame many people’s drug use [as addiction...] even if many people are not using drugs because of addiction’.

As part of their approach, most lawyers suggested that it was important to portray a person’s drug use (or ‘addiction’) in quite specific ways. In particular, and as Australian lawyer Maxwell explained, lawyers believed that it was necessary to downplay any benefits or pleasures that might be associated with substance use for their clients, instead arguing instead that addiction was a ‘battle’. He explained:

So, yeah, it’s always that tactic to try to see how they’re dealing with their ‘battle’, you know. ‘Addiction is very, very ugly, and it’s very, very lonely’. (emphasis added)

Anticipating that the magistrate would take pity on his client by framing it this way, Maxwell described a strategy in which he would depict his client as an addict fighting a ‘battle’, where addiction is ‘ugly’ and ‘lonely’.

As explained in more detail in Seear (2020), there are often affective dimensions to this work. This can also be shaped by gender, including gendered understandings about men’s and women’s substance use, and how courts might respond to this (see Seear, 2017). According to Maxwell, one of his core tasks is to assess what kind of emotional response is most likely to flow if he positions his client as experiencing an ‘addiction’. As Maxwell explained, his approach to advocacy on behalf of his clients was shaped by the perception – one that he believed most decision makers held – that:

drugs are evil, you know, in the eyes of the court. But if you can say: ‘Oh, they are evil, and look how evil they’ve been to my client, my client has been completely whipped to the gutter with these drugs, and can’t get up, but he’s trying – he’s on this, he’s on a methadone program, or he wants to be on there’. You know that’s more of a sob story than: ‘Oh yeah, my client likes to get on it on the weekend, and Your Honour, and in a state of mania from the methamphetamines, he hit his girlfriend’. (Maxwell)

Importantly, Maxwell drew no distinction between substance use and addiction. Through his advocacy practices, shaped by what he anticipates will be the best strategy, drug use is not differentiated from addiction. In this way, in the strategies of many lawyers, substance use becomes addiction.

The production of ‘addiction’ through law

As noted above, many lawyers spoke about ‘addiction’ as a purely strategic device deployed in order to obtain what they adjudged to be the best possible outcome for their client.

Some decision makers were conscious of these strategies and expressed skepticism, accordingly, about ‘addiction’ claims. For instance, magistrate Quentin believed that people could be ‘genuinely addicted’ but thought that lawyers often made claims about addiction without proof. This generated uncertainty and suspicion about whether those who came before the court were really deserving of extra support, mitigated sentences, and so on. He explained:

I’m cynical about the claims made about addiction. Mere claims about addiction – you hear them so often, but there’s never any proof. It’s the easiest thing in the world to say [...] For example, a person might have been sexually abused as a child and then they’ll claim later that it explained [the addiction and the] offending. I don’t believe it.

As these examples show, and drawing on observations in Part 2.1 of this report, both lawyers and decision makers point to each other as playing a vital role in producing addiction. These processes call to mind the work of David Moore and Suzanne Fraser (2013). In their work on policy, service provision and addiction, Moore and Fraser argue that policy processes generally approach ‘addiction’ as an object that precedes attempts to identify or manage it, addiction is in fact made through policy and practice. Drawing upon qualitative interviews with policymakers and service providers, they found that:

alcohol and other drug treatment policy in Victoria does not merely identify and respond to a pre-existing condition called ‘addiction’; instead, it is one of the processes through which addiction is produced. (2013: 922)

A similar process is underway here. The importance of anticipation in the production of ‘addiction’ narratives and concepts is discussed in more depth elsewhere (Seear, 2020).

3. Alcohol, drugs and family violence

In interviews, lawyers and decision makers were asked to describe not only how alcohol, other drugs and ‘addiction’ featured in their work, but in which particular areas, or in relation to which kinds of problems. One area that featured prominently was family (or ‘intimate partner’) violence. This was viewed as an especially important, complex and controversial area. Moreover, the role of lawyers in generating and stabilising understandings of these links is under-researched. These issues were therefore explored in more depth as part of this project (see: Seear, 2020; Seear & Fraser, 2016).

Lawyers frequently claimed that it was advantageous to position alcohol or drugs as the ‘cause’ of family violence, or to draw other connections between substance use and family violence in their work. As with the practices described in Part 2 of this report, these connections were typically made for strategic reasons, and because lawyers believed that it would be helpful to their clients. Importantly, lawyers representing perpetrators of family violence, who were often men, described making these connections in circumstances where the victims of such violence were usually women. In this respect, legal strategies and practices raise important questions about equity, justice, fairness and safety for victims of family violence, especially women (an issue discussed in more detail in Seear & Fraser, 2016).

Linking family violence to alcohol, other drugs and addiction in criminal sentencing

Lawyers reported implementing these strategies (of positioning substance use or ‘addiction’ as the cause of family violence) in different legal contexts, and for different purposes. One of these was the criminal law, and involved strategies implemented by lawyers representing clients who were being sentenced for their offending.

For instance, Australian lawyer Maxwell (whose work was also discussed in Part 2) explained that in his experience, drawing links between substance use, ‘addiction’ and family violence was helpful

when representing clients who were being criminally sentenced because it offered decision makers a means by which to better understand the client’s behaviour. It may help engender sympathy, while also offering a tangible and identifiable ‘explanation’ for violence that could be addressed. Framing things in this way was important because it may influence how decision makers thought about the risk of that client reoffending in the future, and whether such risks could be managed or mitigated.

In Maxwell’s view, linking family violence to alcohol or other drugs and ‘addiction’ was useful because it offered a more sympathetic framework within which to conceptualise otherwise egregious behaviour. As he explained:

having an ‘addict’ is better than having someone who has used methamphetamines just on a weekend occasionally, and then gone and beaten up their partner. (Maxwell, Australia)

In other words, according to lawyers’ accounts of the work that they do, ‘addiction’ is a strategic device deployed in a bid to engender sympathy and to justify the use of drugs by some clients as either non-volitional or less volitional. If these clients were prepared to commit to alcohol or other drug treatment, this may also create the impression that the ‘causes’ of such violence could be isolated and addressed, reducing the risks of reoffending. This may result in a more lenient sentence for the client.

Linking family violence to alcohol, other drugs and addiction in intervention order/personal safety contexts

One other area of law where lawyers drew connections between alcohol, other drugs, ‘addiction’ and family violence was in the civil law. In Australia, individuals experiencing family violence (which is broadly defined in some legislation) can apply to courts for orders – known variously as ‘intervention orders’, ‘apprehended violence orders’, ‘personal safety intervention orders’ – to protect them from experiencing further family violence.

“ legal strategies and practices raise important questions about equity, justice, fairness and safety for victims of family violence, especially women

A family violence intervention order is a civil court order that is designed to protect a victim of family violence from experiencing further violence. The nature and specifics of these orders vary, and courts have wide powers to determine the specific parameters of any order granted, based on the nature of the violence and the needs of the victim. Importantly, parties can also reach agreement about the terms of such orders, after which the court will approve the order (making it legally enforceable). These orders will typically include provisions preventing a person (the perpetrator) from approaching, harassing or stalking another person (the victim) and from perpetrating family violence against them. As noted earlier, ‘family violence’ is broadly defined and so may incorporate a legal requirement not to emotionally or psychologically abuse a person, or not to engage in financial abuse (by, for instance, controlling the family bank account and denying the victim access to money).

These orders may also include additional special provisions designed to address the underlying causes of such violence, or contributing factors. Courts may require a perpetrator to undergo alcohol or other drug counselling, for instance, or order them to attend a men’s behavioural program. As noted earlier, the perpetrator may consent to an order or to such conditions. There are numerous reasons that perpetrators (or alleged perpetrators) might consent to such an order. They might, for instance, live with the victim and wish to continue co-habiting. In this case, the perpetrator might be interested in obtaining a more limited order – one that allows them to continue to live in the house with the (alleged) victim, without any limitation on approaching them, but with a requirement that they not perpetrate family violence.

In these cases, lawyers explained that it was strategically advantageous to position alcohol, other drugs or ‘addiction’ as the ‘cause’ of such violence. There are many reasons for doing so. In cases where lawyers are negotiating with each other or directly with victims, it may be easier to engender sympathy for the perpetrator or to explain the behaviour away – as an effect of something else, or for which the offender bears less agency or responsibility (Seear & Fraser, 2016). It may also make it easier to manipulate the victim into feeling sympathy for the offender, or to encourage them to withdraw their application for an order, perhaps in exchange for the perpetrator agreeing to address their substance use. It may also influence the decision maker, as a way of reassuring them that the perpetrator should not be subject to major restrictions over their movement and behaviour, in

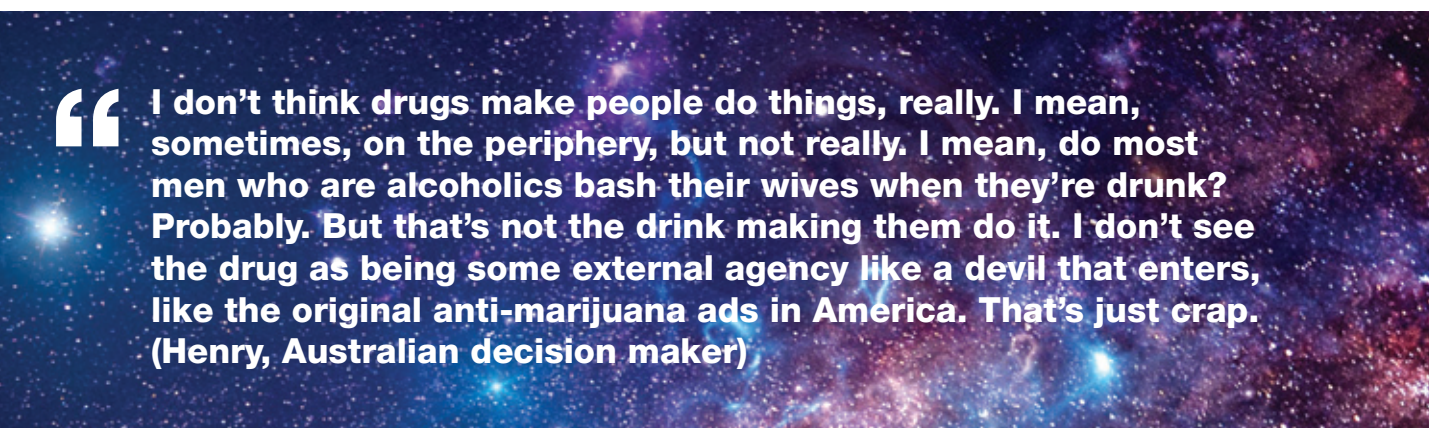
exchange for them addressing the underlying cause of the violent behaviour. These strategies are sometimes also in play when substances are consumed by the victim rather than the perpetrator (see Seear & Fraser, 2016). In these cases, lawyers might argue that men lashed out at women because of frustrations about the woman’s substance use. In these cases, therefore, men’s violence against women was constituted as an effect of alcohol or other drug consumption (whether by perpetrators or victims) in ways that might diminish perpetrator agency, reshape how agency and responsibility was conceptualised, or otherwise materially impact on victims (e.g. by encouraging them to withdraw the application).

Linking family violence to alcohol, other drugs and addiction in child protection contexts

Child protection is an area of law that governs the role and powers of the State to intervene in families where children are adjudged to be at risk of abuse, neglect, or where caregivers are not adequately caring for their children. A failure to protect children (e.g. from the violent behaviour of a partner) may also be grounds for intervention. In each Australian state and territory, government departments have specific powers to intervene in families to protect children; this might involve requiring parents take steps to mitigate or reduce such risks, or removing children from the care of parents or guardians altogether.

In this project, lawyers described a complex but important relationship between alcohol, other drugs, addiction, family violence and child protection, including child removal. This may include cases where alcohol or other drug consumption was deemed a risk to children. Lawyers described encountering cases where a woman might be consuming substances in order to deal with violence being perpetrated by a partner or former partner. Several lawyers raised concerns about how these issues were understood and managed, including by government officials, and what expectations were placed on parents, especially mothers, when it came to addressing government concerns. These processes also raised questions about equity, fairness and justice, particularly for women, and are discussed in more detail elsewhere (Seear, 2020).

4. Concerns regarding existing approaches



“ I don’t think drugs make people do things, really. I mean, sometimes, on the periphery, but not really. I mean, do most men who are alcoholics bash their wives when they’re drunk? Probably. But that’s not the drink making them do it. I don’t see the drug as being some external agency like a devil that enters, like the original anti-marijuana ads in America. That’s just crap. (Henry, Australian decision maker)

Lawyers and decision makers raised several concerns about the processes and practices described in Parts 2 and 3 of this report. In this Part, some of these concerns are detailed. These and others are documented in more detail elsewhere (Seear, 2020).

How we understand social problems

Legal strategies pertaining to addiction can have far-reaching consequences, especially for how we understand social problems. Legal processes can position people who use substances as damaged and disordered, sick or lacking in agency, and may constitute ‘addiction’ as the central cause of major social problems (such as violence against women). Where this happens, other factors that may play an important role in the production of social problems – such as failings in social policy, socialisation, broader societal attitudes towards women, and so on – may be ignored or dismissed.

As Erica pointed out:

You know, you remove choice from a group of people that become victims and then the way that we design policy around them is arguably dysfunctional because of that. (Erica, Canada)

She went on to say that policy approaches to drugs can be ‘harmful’ as a result, particularly where they are informed by legal findings of ‘fact’ that constitute drug use as sickness and addicts as lacking in agency. Caitlin, a judge, feared that focussing on ‘addiction’ as the root cause of problems was problematic because of what it implied about the availability of solutions to complex issues. She noted that by positioning problems as the effect of ‘addiction’ or consumption, it ‘may even exaggerate the extent to which at least some people [think they] can do something about it’.

Differences in opinion regarding family violence

Importantly, there were differences in opinion among both lawyers and decision makers as to some social problems, especially family and sexual violence. Some were unsure about whether there was a ‘genuine’ or ‘real’ link between alcohol, other drugs and family violence, or whether the link was made for purely strategic purposes by lawyers in an attempt to advocate for their clients. One decision maker, Lucy, was clear, noting that ‘with male perpetrators certainly the alcoholic addiction seems to be a trigger for a lot of the behaviour that we’ve seen’. Another, Quentin, suggested that ‘Addiction is a very strong driver of domestic violence as well’. Linda, a judge, explained that:

It struck me almost from the outset, and then it became more frequent and more intense over time, that so much of the criminal offending was permeated somehow in some way by drug and alcohol addiction.

Others did not believe these links were credible, however. One decision maker, Henry, explained it this way:

I don’t think drugs make people do things, really. I mean, sometimes, on the periphery, but not really. I mean, do most men who are alcoholics bash their wives when they’re drunk? Probably. But that’s not the drink making them do it. I don’t see the drug as being some external agency like a devil that enters, like the original anti-marijuana ads in America. That’s just crap. Mind you, that’s our conditioning, isn’t it? That’s what we’re taught to think about drug addiction: is the drug enters your body, changes your personality, makes you into a monster. And as soon as you stop using that drug, everything will be great. Well, that’s just shit.

As noted in Part 3, one major area of concern that came up frequently in interviews with lawyers and sometimes with decision makers involved family violence, including lawyers' tendency to try and 'explain' or position family violence as an effect of alcohol or other drug consumption.

Some raised major concerns about the implications of this for women. These concerns also aligned with other concerns (noted above, in Part 4.1) that the causes of social challenges such as violence against women were simple, and had simple solutions. Celeste, another decision maker, addressed this issue in some detail. She was uncomfortable with the tendency for broader systemic concerns to be elided when law enacted alcohol and other drug 'addiction' as central and causal. She explained it this way:

But let's say Prisoner X is in jail for battering his wife while he was drunk and let's say he only has a history of doing this while he's drunk, and let's say you release him on parole on condition he not drink and he adheres to that. I guess in some way you are reducing the risk of him battering his wife. That is very superficial but it's something I think that matters. It doesn't mean that I don't think we should be taking that measure on top of a myriad of other things, but I do think there should be a condition of his parole that he not drink. I think the system is not equipped for any kind of nuance. It just has rigid rules you apply across the board. You're not really looking at the complexities of a case and coming up with a genuine solution. You are just ticking some boxes, basically. Especially when it comes to those [addiction] programs.

Celeste continued, saying that:

I totally get that your focus is on addiction and that's what you are looking into. But it also sort of doesn't make sense in isolation, because it is part of a much broader attitude to criminal conduct generally, and that is that there is zero compassion in that system, or very little room for that, and very little room for understanding why people commit offences. The treatment of addiction is really just systematic of a much bigger problem, which is that our system doesn't need to or seek to inquire into the factors that lead to people committing offences and once they are part of the system they generally never get out of that.

The impact on clients

The practices and processes described in this report may have implications for how people will be seen and how people will come to understand themselves. As Canadian lawyer Barry explained:

Barry: What's lacking [in law] is the holistic approach you know and the just the terminology, you know the designation of an illness, an addiction. That's pathologising. It gets in the way.

Kate: What does it get in the way of, do you think, Barry?

Barry: It gets in the way of the person. They become identified as the label, you know, so their humanity gets lost. And the assumption in all of those designations is that something is wrong. In my perspective, these are actually indications something is right. Like these [drugs] are how people deal with their lives, there is a value in what they are doing and to eliminate it without replacing it with something, is I think like it's too moralistic. [Drug use] serves a purpose, right?

As Australian lawyer Fern also explained:

So in a plea in mitigation you're, it's often unfortunately, I guess, [you are] presenting your client in the – not the most helpless light possible – but you're playing up the challenges they're facing and all the things going wrong in their life, and how terrible it is for them and if they've got a disability, going on about their disability and so on. It's very – it's not a great model, and it's not great for clients. (Fern, Australia)

And as Maxwell also explained:

Yeah, and it goes back to that just doing what the court wants you to say. It's not necessarily what you believe, and there's been times afterwards I've said: 'Look, you know, that was for the court. You know that I think you're a great guy, and all the rest of it, but you have to paint this picture that the court wants to hear in order to get the result that you want to get'.

The accounts of these lawyers were striking insofar as they mostly did not engage with or ask clients about what this way of narrating their lives would mean for them. Some lawyers assumed that what went on in court was just for show: as if utterances made in the courtroom were not ‘real’ and could be separated out from people’s lives, and thus from how their clients come to think about or understand themselves in light of what was said about them. Lawyers did not always recognise, therefore, the potential for clients to come to think about themselves as something other than ‘great guys’ as a result of the legal processes they were subjected to. Legal practices and processes thus raise important questions about how the law impacts upon people who use alcohol and other drugs. These issues are also documented in more detail elsewhere (Seear, 2020). Importantly, there is a need for much more research on these issues, including research which examines the experiences of people who use drugs and those labelled as ‘addicts’ through legal processes.

Stigma

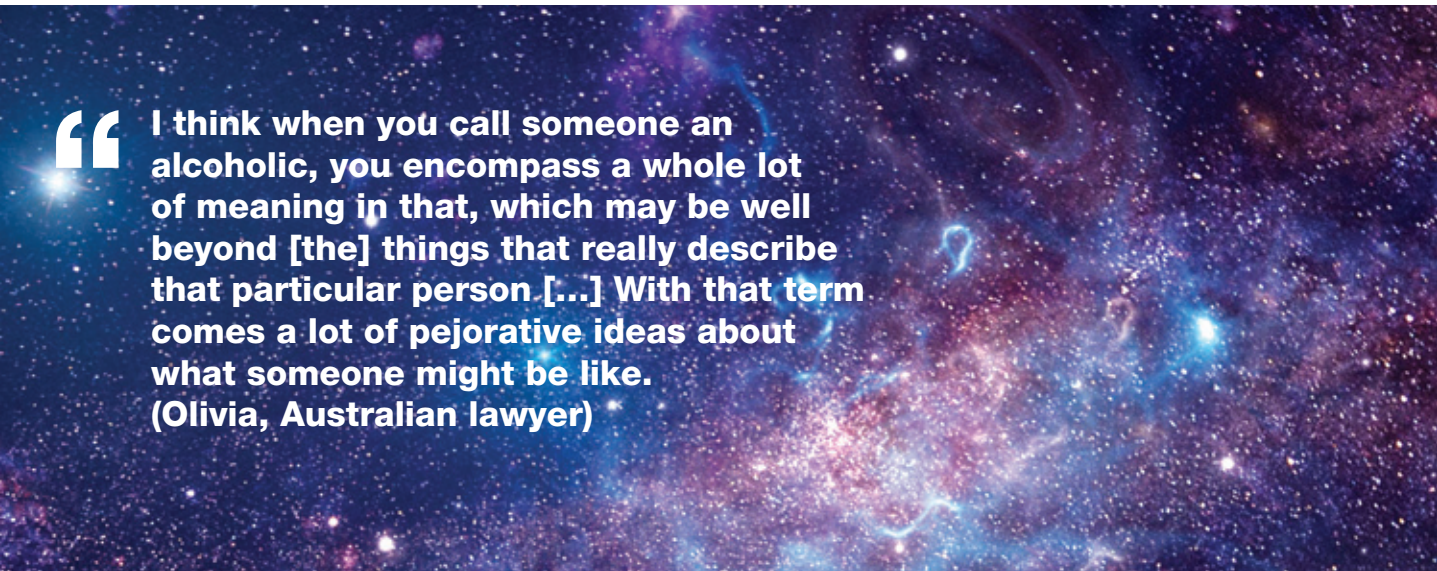
The strategic decision to position drug use as addiction and addiction as a disease in legal contexts was also troublesome ‘because of the stigma [...] that’s associated with addiction’ (Simone, Canada). These concerns extended to the use of similar terms by lawyers and decision makers (e.g. ‘alcoholic’). Australian lawyer Olivia accepted that ‘alcoholism’ might be a legitimate designation, and that she might even be dealing with clients who were alcoholics, or who considered themselves as alcoholics. Despite this, the use of the terminology concerned her, for what it implied about the person:

I think when you call someone an alcoholic, you encompass a whole lot of meaning in that, which may be well beyond [the] things that really describe that particular person [...] With that term comes a lot of pejorative ideas about what someone might be like. (Olivia, Australia)

Both lawyers and decision makers expressed concerns about the potential for these processes to further stigmatise people who use drugs and/or to generate or exacerbate marginalisation.

Legal ethics

Although some of the concerns raised by lawyers and decision makers (e.g. how to describe or depict clients) might not be considered as a conventional ‘ethical’ concern (see Seear, 2020) there is an argument for thinking of these as ethical problems. Broader considerations, including the effects of instantiating stereotypes, producing and reproducing stigma, or constituting people as disordered, irrational or hopeless were discussed by several interviewees as ethical-type problems. This raises several questions, including whether the processes described in this report should be more explicitly and regularly characterised – in legal scholarship and legal education – as *ethical problems*. If so, this raises the possibility that these issues should be addressed as ethical issues, obligations or responsibilities more proactively in legal education.



“ I think when you call someone an alcoholic, you encompass a whole lot of meaning in that, which may be well beyond [the] things that really describe that particular person [...] With that term comes a lot of pejorative ideas about what someone might be like. (Olivia, Australian lawyer)

Conclusion and recommendations

This report has outlined key findings from an international Australian Research Council-funded project exploring conceptualisations of alcohol and other drug addiction in Australia and Canada, undertaken between early 2016 and early 2019. It built on a pilot study undertaken between 2013 and 2014. The findings are based on interviews conducted with lawyers in Australia and Canada, decision makers (e.g. magistrates and judges) in Australia and an analysis of legislation.

Key findings of the project include:

- That addiction features in multiple areas of law (e.g. criminal law, family law, family violence proceedings [e.g. for intervention orders], disability discrimination law, social security law, crimes compensation law, other regulatory settings [e.g. admission and professional regulation of lawyers and doctors], medical/public health contexts [e.g. mandated treatment]);
- Across Australia, ‘addiction’ or ‘dependence’ feature in thirty-six separate pieces of legislation and regulations, with seventy-nine relevant provisions. Addiction most commonly appears in laws dealing with ‘public health’ matters such as mandated treatment or supervised injecting facilities, followed by ‘health regulation’ matters such as penalising practitioners for prescribing to drug dependent persons without authorisation or failing to notify particular agencies, followed by criminal law matters including the provision for drug treatment programs as part of sentencing;
- The legislation attaches significance to addiction and/or dependence for a range of different purposes and with different consequences. These approaches are sometimes at odds. For instance, in some areas of law, ‘addiction’ or ‘dependence’ may operate as the basis for a legal right or concession, whereas in others, it forms the basis for the removal of a legal right or concession afforded to others. In this sense, ‘addiction’ and ‘dependence’ have multiple and contradictory legal meanings. These differences – regarding how ‘addiction’ might be conceptualised and what it can or should afford – align with conceptualisations of and approaches to ‘addiction’ in other institutional settings and contexts, as discussed at length in other academic scholarship;
- Despite the fact that significance is attached to addiction and/or dependence in numerous laws, these terms are rarely defined in the legislation. An absence of definitions may result in uncertainty, greater subjectivity or arbitrariness and more inconsistency in the application of legislation, raising questions about equity, fairness and justice for those affected by the legislation mapped for this project;
- In legal practice, lawyers described alcohol and other drug issues, as well as ‘addiction’, surfacing in a much wider range of legal contexts and for a wider range of legal issues than appear in legislation. They also described ‘addiction’ as being ‘relevant’ to different problems and for a more extensive range of problems;
- The more widespread surfacing of alcohol and other drug issues, and the use of ‘addiction’ terminology and concepts in law is primarily due to two sets of practices described by lawyers. First, the language of ‘addiction’ may be *proactively asserted* by a party to a legal proceeding in circumstances where it was thought to be either strategically useful or even necessary to do so. Second, it may be *reactively asserted*, as where the fact of someone’s drug use becomes known in a legal proceeding and a strategic decision is made to respond to that revelation by constituting one’s use as an ‘addiction’. The use of language of ‘addiction’ often occurs because of a *strategic decision to introduce the language of addiction or key concepts of addiction into law*. In this sense, *legal strategy is central to the emergence of addiction in law*;
- Lawyers and decision makers describe having little or no training in alcohol or other drug dependence, say that they are unfamiliar with debates taking place in other fields about addiction and are unaware of the lack of consensus about contested meanings;
- Some decision makers express frustration about lawyers, suggesting that they are too conservative and lack creativity in their arguments. Several decision makers expressed concern about prohibitionist/strict approaches to drug law and were keen to see reforms, but wanted lawyers to be bold. These issues are not discussed in detail in this report but covered in more depth elsewhere (e.g. Seear, 2020);
- There were suggestions that lawyers should think about ‘addiction’ like they once thought about ‘gender’: as laden with stereotypes, and as shaped by cultural ideas, norms and practices. Decision makers encourage lawyers to take their cue from feminist advocates, who have challenged gendered stereotypes in areas such as family law and criminal law (e.g. where the credibility of victim witnesses has been questioned in sexual assault trials, or when allegations of family violence are raised). These issues are not discussed in detail in this report but covered in more depth elsewhere (e.g. Seear, 2020);

- Major concerns were raised about the potential for addiction language and concepts to be harmful or stigmatising, and questioning whether such terminology or concepts are strictly legally necessary or helpful;
- One major area of concern involves family violence and addiction, including the tendency of some lawyers to try and 'explain' or 'excuse' family violence as an effect of alcohol or other drug consumption. There are concerns about the ethics, politics and implications of this (especially for women and children);
- Skepticism about other kinds of addictions, particularly sex addiction. Particular concerns were raised about attempts to 'explain' or even 'excuse' violent, predatory or other sexually inappropriate kinds of behaviour (e.g. flashing) on the basis that it was caused by a sex addiction. Decision makers were especially skeptical about the idea that sex addiction was a 'real thing'. There was less reflection, however, on whether this was a similar kind of ethical/political problem to alcohol or other drug addiction in the context of family violence. These issues are not discussed in detail in this report but covered in more depth elsewhere (e.g. Seear, 2020);
- There is some tension in lawyers' and decision makers' reflections on addiction: on the one hand, they view addiction as a real object that is 'real', 'genuine' or 'already there' (i.e. as something that exists outside of legal practice, the meaning of which precedes legal argument) while on the other hand, they see it as something devoid of inherent meaning, that is constructed via legal argument (i.e. made in practice);
- There is also some tension in how lawyers and decision makers understand the consequences of addiction, what needs to be addressed when dealing with addiction in legal contexts, and underlying key concepts of addiction. For instance, some see addiction as the cause of major social problems such as crime, and view those labelled as 'addicts' as untrustworthy, chaotic and irrational. Others raised concerns about the central focus placed on addiction/drugs/alcohol as the origin of social problems, and saw some of the problems typically associated with addiction as in fact effects of systemic failings. Examples include: imposing bail or parole conditions that cannot possibly be met (because of geography, or waiting lists), imposing expectations and conditions in child protection contexts that are also unrealistic (because of waiting lists, or because the services offered are culturally inappropriate), having siloed systems (e.g. that do not cater for people with a dual diagnosis). Depending on the setting and context the expectations of people labelled as 'addicts' can vary significantly, and be more or less impossible to comply with. These expectations range from: requiring people to remain abstinent, requiring people to merely show some 'insight' into their 'problem', requiring them to simply enrol in a program or requiring them to actually complete a program. These differences in approach and understanding have major implications for legal outcomes, including: for the separation of children and parents in child protection settings, and for the intensification of criminalisation. Some of these issues are not discussed in detail in this report but covered in more depth elsewhere (e.g. Seear, 2020).



Key recommendations of the project are as follows:

1. Consideration should be given to whether the language of ‘addiction’ and/or ‘dependence’ is necessary or appropriate in legislation, especially as concerns have been raised about the potential for such language and associated concepts to stigmatise people who use alcohol and other drugs, including in ways that may generate or exacerbate poorer social, economic and health outcomes;
2. If the language of ‘addiction’ and/or ‘dependence’ must be retained in statutes, consideration should be given to whether such terms should be defined, and if so, how. In an associated sense, consideration should be given to whether there is some benefit in generating consistent approaches to these definitions across different statutes;
3. The strategies adopted by lawyers (e.g. to position clients as ‘addicts’ for strategic reasons and/or to position certain phenomena – such as family violence – as caused by addiction) should be seen as not only legal but ethical issues;
4. In legal practice, there is a need for more careful attention to the implications of characterising people as ‘addicts’, ‘alcoholics’ or similar, especially in circumstances where clients are not told that this is how their use of alcohol or other drugs will be characterised, or where they may be unaware that there are alternatives available to them;
5. There is a need for more research to be undertaken on the ethical and political dimensions of legal addiction-attribution, including research with the people who are most directly affected by the practices described in this report;
6. Law schools should develop modules so that law students can learn more about alcohol and other drugs in general and debates about ‘addiction’ in particular, including the relationship between legal practices and alcohol and other drug-related stigma. These modules should be prepared in consultation with experts in the field including people who use or who have used drugs and peak peer organisations (e.g. Harm Reduction Victoria, NUAA, AIVL);
7. Although modules on alcohol and other drugs could be incorporated into numerous law subjects the most appropriate locations are in clinical legal education and legal ethics;
8. Judicial colleges should give consideration to whether existing judicial education on addiction is sufficient, including whether there is value to decision makers being exposed to literature on alcohol and other drug-related stigma.

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Appendices

Appendix 1:
Publications and presentations

Appendix 2:
Interview schedule – lawyers

Appendix 3:
Interview schedule – decision makers

Appendix 1: Publications and presentations

Books

1. **Seear, K. (2020).** *Law, drugs and the making of addiction: Just Habits.* Routledge: London.
2. Spivakovsky, C., **Seear, K.** and Carter, A. (eds). (2018). *Critical perspectives on coercive interventions: Law, medicine and society.* Routledge: London.

Chapters

1. Spivakovsky, C., **Seear, K.** and Carter, A. Coercive interventions in law and medicine: Setting the scene. In: Spivakovsky, C., **Seear, K.** and Carter, A. (eds). (2018). *Critical perspectives on coercive interventions: Law, medicine and society.* Routledge: London, 1-9.

Journal articles

1. **Seear, K.** and Batagol, B. (Under preparation). The need for a new ethical rule in family violence intervention order matters.
2. **Seear, K.** (Under preparation). 'Set up to fail': How judges and lawyers approach addiction, treatment, 'success' and 'failure' in legal settings.
3. **Seear, K.** (In press). Addressing alcohol and other drug stigma. Where to next? *Drug and Alcohol Review.*
4. **Seear, K.** and Fraser, S. (Under review). A highly charged field: Mapping energies, currents and desires for reform in Canadian expert responses to drug law.
5. **Seear, K.**, Fraser, S., Moore, D., Keane, H. & valentine, k. (Under review). Shame and sympathy: Articulations of emotion, 'proper' citizenship and nation building after the Royal Commission on child sexual abuse.
6. **Seear, K.**, Bliss, L., Galowitz, P. & Klein, C. (2019). Exploring the role of emotions in clinical legal education: Inquiry and results from an international workshop for legal educators. *The Law Teacher.*
7. **Seear, K.** (2019). Do law clinics need trigger warnings? Philosophical, pedagogical and practical concerns. *Legal education review*, vol 29, 1-23.
8. **Seear, K.** and Fraser, F. (2018). Euthanasia for what? Attending to the role of stigma in addiction-related 'intractable suffering' and 'incurability'. *Addiction*, 113(7), 1181-1182.
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12. **Seear, K.** and Fraser, S. (2016). Addiction veridiction: Gendering agency in legal mobilisations of addiction discourse. *Griffith Law Review*, 25(1), 13-29.
13. Sifris, R., **Seear, K.** and Grant, G. (2016). Gender, health and the law: Opportunities and challenges for reform. *Griffith Law Review*, 25(1), 1-12.

14. * **Seear, K.** (2015). Making addiction, making gender: a feminist performativity analysis of Kakavas v Crown Melbourne Limited, *The Australian Feminist Law Journal*, vol 41, issue 1, pp. 65-85.
15. * **Seear, K.** and Fraser, S. (2014). Beyond criminal law: The multiple constitution of addiction in Australian legislation. *Addiction Research & Theory*, 22, (5), 438-450.
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Inquiries/law reform – written submissions

1. **Seear, K.**, Fraser, S., Moore, D., valentine, k. (2019). *Submission to the Commonwealth Senate Committee Inquiry into the Social Services Legislation Amendment (Drug Testing Trial) Bill 2019*.
2. **Seear, K.**, Fraser, S., Moore, D., valentine, k. (2018). *Submission to the Commonwealth Senate Committee Inquiry into the Social Services Legislation Amendment (Drug Testing Trial) Bill 2018*.
3. **Seear, K.**, Fraser, S., Moore, D., valentine, k. and Keane, H. (2017). *Submission to the Victorian Law Reform Commission Review of the Victims of Crime Assistance Act*.
4. **Seear, K.** (2017) *Submission to the Victorian Parliamentary Law Reform Road and Community Safety Committee into Drug Law Reform*.
5. **Seear, K.** (2017) *Submission to the Victorian Parliamentary Legal and Social Issues Committee Inquiry on the Inquiry into the Drugs, Poisons and Controlled Substances Amendment (Pilot Medically Supervised Injecting Centre) Bill 2017*.
6. Fraser, S., Moore, D. and **Seear, K.** (2017) *Submission to the Commonwealth Parliamentary Inquiry into the Social Services Legislation Amendment (Welfare Reform) Bill 2017*.
7. Johnson, J., Lenton, E., Henderson, C., Morgan, H., Forrest, M., Murray, J., Kidd, P. & **Seear, K.** (2017). *Response to the Department of Health and Human Services Notifiable conditions review discussion paper*.
8. Moore, D., Fraser, S., Keane, H., **Seear, K.** and valentine, k. (2016) *Submission to the Legal and Constitutional Affairs Reference Committee Inquiry into the 'need for a nationally-consistent approach to alcohol-fuelled violence*.

Inquiries/law reform – oral evidence

1. **Seear, K.** (2019) *Special Commission of Inquiry into the drug 'ice'*, Sydney, NSW;
2. **Seear, K.** (2019) Summit – *Responding to Crisis: A human rights and public health approach to legal regulation of currently prohibited substances*, British Columbia, Canada;
3. **Seear, K.** (2019) *West Australian Select committee into alternate approaches to reducing illicit drug use and its effects on the community*;
4. **Seear, K.** & valentine, k. (2018). Commonwealth Drug Testing Trial Bill;
5. **Seear, K.** (2017). Victorian Parliamentary Inquiry on Drug Law Reform;
6. **Seear, K.** & Fraser, S. (2017). Victorian Law Reform Commission on victims of crime compensation.

Conference presentations and invited talks

1. **Seear, K.** 2019: Annual Alice Tay memorial lecture on human rights, ANU, Canberra – *keynote speaker*
2. **Seear, K.** 2019: Contemporary Drug Problems Biennial Conference, Prato, Italy – *keynote speaker*
3. **Seear, K.** 2019: South Australian Network of Drug & Alcohol Services, Adelaide – *keynote speaker*
4. **Seear, K.** 2019: Victorian Alcohol and Drug Association, Melbourne – *keynote speaker*
5. **Seear, K.** 2019: Utrecht University Posthuman Knowledges Masterclass – *invited panellist*
6. **Seear, K.** 2019: Australian Research Centre in Sex, Health & Society, La Trobe University, Melbourne – *invited seminar*
7. **Seear, K.** 2018: National Drug Research Institute Annual Symposium, Melbourne – *invited speaker*
8. **Seear, K.** 2018: International Journal of Clinical Legal Education Conference – *co-convenor of event*
9. **Seear, K.** 2018: International Legal Ethics Conference, Melbourne – *selected from abstract*
10. **Seear, K.** 2018: Australian Centre for Justice Innovation, drug law reform panel, Melbourne – *co-convenor of event*
11. **Seear, K.** 2018: Law and Society conference, Toronto, Canada – *selected from abstract*
12. **Seear, K.** 2018: Liberty Victoria event on supervised injecting facilities, Melbourne – *invited speaker*
13. **Seear, K.** 2018: 4S Conference, Sydney – *selected from abstract*
14. **Seear, K.** 2018: Students for Sensible Drug Policy and Progressive Law Network Joint Special Event – *invited speaker*
15. **Seear, K.** 2017: Castan Centre for Human Rights Law Annual Conference, Melbourne – *keynote speaker*
16. **Seear, K.** 2017: Contemporary Drug Problems Bi-Annual Conference, Helsinki, Finland – *selected from abstract*
17. **Seear, K.** 2017: Monash University Torque Global Health Forum – *invited speaker*
18. **Seear, K.** 2017: LaTrobe Centre for Health Law and Society, Melbourne – *invited seminar*
19. **Seear, K.** 2017: Students for Sensible Drug Policy Annual Conference – *invited speaker*
20. **Seear, K.** 2017: Students for Sensible Drug Policy Special Event – *invited speaker*
21. **Seear, K.** 2016: Australasian Viral Hepatitis Conference, Gold Coast – *keynote speaker*
22. **Seear, K.** 2016: Centre for Social Research in Health: HIV, hepatitis and related diseases, Sydney – *selected from abstract*
23. **Seear, K.** 2016: Harm Reduction Victoria: Drug law reform forum, Melbourne – *invited speaker*
24. **Seear, K.** 2016: Yarra Drug Health Forum, Melbourne – *invited speaker*
25. **Seear, K.** 2016: International Legal Ethics Conference, New York City – *selected from abstract*
26. **Seear, K.** 2016: Somatechnics International Conference, Byron Bay – *selected from abstract*

27. **Seear, K.** 2016: National Drug Research Institute Social Studies of Addiction Concepts Forum: Thinking Addiction, Melbourne – *co-convenor of event*
28. **Seear, K.** 2016: Intervention, prevention and punishment: Authenticity and capacity in mandated treatment, Melbourne – *co-convenor of event*
29. **Seear, K.** 2016: Monash University Faculty of Arts Trust, narrative and expertise roundtable, Melbourne – *invited speaker*

Print media

1. **Seear, K.** (2019). 'Drug decriminalisation: time is right for action on UN commitment', *Monash Lens*;
2. **Seear, K.** (2019). 'Richmond's safe-injecting room: Controversy overshadows positive community impact', *Monash Lens*;
3. **Seear, K.**, Treloar, C. & Lancaster, K. (2018). 'Victorian drug law reform recommendations are welcome - but must include prisoners. *The Conversation*;
4. **Seear, K.** & Fraser, S. (2017). 'When it comes to redress for child sexual abuse, all victims should be equal. *The Conversation*;
5. **Seear, K.** (2017). 'Why there's no legal barrier to a Melbourne drug injecting room, despite political setbacks. *The Conversation*.

* denotes a publication from the pilot study.

Appendix 2: Interview schedule – lawyers

1. How would you describe your work? Can you tell me a bit about what your job involves?
2. As you know, the specific focus of this study is addiction and the law. Can you explain to me how addiction comes up in the kind of work that you do? Can you tell me about a recent case, by way of example, where addiction was somehow relevant?
3. Thinking now about the specific tasks involved in your work:
 - a. Are there any occasions where you need to make decisions about the nature or extent of your client's substance use, including whether their use might be problematic? Can you tell me how this happens?
 - b. Does your office use any standardised protocols, policies or other tools for assessing these issues? Can you tell me about those? Do you have a view on the use of these?
 - c. Can you tell me about any legal, strategic or other considerations that you need to take into account when considering how to deal with addiction in a given case?
 - d. Do you ever engage in discussions with your clients about the strategy you are using – including, for example, how they feel about the language of addiction or being described as an 'addict' in a legal context?
 - e. Do you have any reflections on how legal approaches to addiction might play out for clients? What are the main issues you see here?
 - f. Are there any specific statutes or cases pertaining to addiction that bear upon the work you do? What are they? Can you tell me about those?
 - g. Do you ever have to engage in debate with other lawyers about the nature and meaning of addiction in your work?
 - a. Can you talk me through an instance where that has happened and how those negotiations played out?
 - b. Did you rely on or utilise expert evidence?
 - h. Are there any other resources (for example: documents, colleagues, other training) that you draw upon in your work that pertain to addiction? Can you tell me about those?
 - i. In what ways are those resources helpful?
 - j. Have you ever received training about substance dependence or addiction? Can you tell me about what was involved?
 - k. In what ways was the training helpful? Were there any issues or areas you would like to see covered in future?
 - l. Do you ever mentor law students or junior lawyers? What do you think are the important lessons to teach people who are new to this space, about dealing with or representing people who use alcohol and other drugs?
4. What are some of the main challenges or risks, if any, that you face in your work, where addiction is an issue?
5. Looking outside your specific area of legal interest/expertise:
 - a. Are you aware of other legal realms where questions around dependence/addiction might figure?
 - b. What are the similarities between those other realms and your own?
 - c. What are the main differences?
 - d. Are you aware of what's happening in these other legal realms (such as developments in case law)? Can you tell me about that?
 - e. In what ways are those resources helpful? In what way are they limited?

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6. There are a number of different approaches to addiction in medicine and public health, and different concepts of addiction.
 - a. Are you aware of these debates and different addiction concepts?
 - b. Do you follow a particular model or clinical framework in your own work?
 - c. How would you define addiction?
 7. Thinking now about different areas of addiction (gambling, obesity, and so on):
 - a. Do you see any common ground between these areas of addiction and alcohol and other drug addiction? Can you tell me about this?
 - b. Do you see any differences between these areas? Can you tell me about those?
 8. There is some controversy about the extent to which certain habits and practices (such as internet use, gambling, eating and so on) should be viewed as addictions. What is your view on the debate surrounding this?
 9. Have you ever directly contributed to or participated in processes of policymaking with regards to addiction, drugs and the law? Can you tell me about this?
 10. Given that the focus of this project is on addiction in the law, broadly, do you have any suggestions for what you'd like our research team to focus on?
 11. That concludes our set list of questions. Is there anything else you would like to tell me about your perspectives on addiction?

Appendix 3: Interview schedule – decision makers

1. Can we start with you introducing yourself and telling me a bit about your background and career?
2. As you know, the specific focus of this study is addiction and the law. Can you explain to me how addiction might come up in the kind of work that you do?
3. What are the most common decisions you need to make about addiction in your work?
Examples: diagnosis, agency, responsibility, liability, culpability, sentencing, deterrence, disability, risk to children, connection to violence?
4. What would you say are the main challenges or difficulties for decision-makers/ judges/ magistrates in cases where addiction is an issue?
5. Is it ever relevant to your work to consider decisions about addiction from other areas of law or jurisdictions? Can you tell me about some of the most relevant cases, and why they were relevant or how they assisted?
6. I'm interested in how judicial thinking evolves and changes over time, especially when it comes to something as complex as addiction.
 - (a) Have you observed changes in the legal approach or response to addiction over time? What are they?
 - (b) In general, how receptive do you think the system has been to change?
7. I understand that people doing the kind of work you do are extremely busy. Is it possible for decision makers to stay informed about changes in thinking and practice over time?
8. Have you ever received training about substance dependence or addiction? Can you tell me about what was involved?
9. Do you think there is a need for more training of judges, magistrates or other key decision makers in relation to addiction? If so, what is it that you think they need to know?
10. There are a number of different approaches to addiction in medicine and public health, and different concepts of addiction.
 - (a) Are you aware of these debates and different addiction concepts?
 - (b) Do you follow a particular model or clinical framework in your own work?
 - (c) How would you define addiction?
11. Thinking now about different areas of addiction (gambling, obesity, and so on):
 - (a) Do you see any common ground between these areas of addiction and alcohol and other drug addiction? Can you tell me about this?
 - (b) Do you see any differences between these areas? Can you tell me about those?
12. There is some controversy about the extent to which certain habits and practices (such as internet use, gambling, eating and so on) should be viewed as addictions. Do you have any view on the debate surrounding this?
13. Given that the focus of this project is on addiction in the law, broadly, do you have any suggestions for what you'd like our research team to focus on?
14. That concludes our set list of questions. Is there anything else you would like to tell me?

