



## Research Brief *Systems Abuse*

### Introduction

Systems abuse refers to the manipulation of the legal system by perpetrators of family violence, done so in order to exert control over, threaten and harass a partner (current or former). Systems abuse most often takes place post-separation and includes such acts as; attempting to have a partner arrested; taking legal action against a partner; making false reports of neglect or abuse to children protection agencies; and applying for intervention orders against a partner (Miller & Smolter 2011). By misusing the legal system, the perpetrator not only creates enormous emotional and financial burdens for the victim, but they also shift the blame away from their own abusive behaviour (Miller & Smolter 2011). Systems abuse fits neatly into Stark's (2007, p.5) concept of coercive control, which is defined as:

Calculated, malevolent conduct employed exclusively by men to dominate individual women by interweaving repeated physical abuse with three equally important tactics: intimidation, isolation, and control.

To date, systems abuse has been under-researched and there is minimal data on the experiences of perpetrators who manipulate the system and of the victims who experience the system as a tool of further abuse. As understandings of family violence progress and evolve, it is important that this type of coercive and controlling violence is not left undetected by the justice system.

### Background

'Systems abuse' (also referred to as legal abuse or paper abuse) is a relatively recent term, as it has only been conceptualised as a specific type of family violence in the past few years. However, perpetrators have been utilising the legal system as a form of abuse for far longer.

The United States (U.S.) has documented the perpetration of systems abuse in both their criminal and civil legal systems. Within the criminal justice system, systems abuse has manifested as an unintended consequence of the pro and mandatory arrest laws established in the 1980s. These laws limit the discretion of responding officers by either strongly encouraging or compelling them to arrest those they suspect of perpetrating family violence (Feder 1997; Finn et al. 2004). Due to a lack of specialised family violence training, this may often result in police arresting female victims whom they have incorrectly identified as primary aggressors (Finn et al. 2004; Buzawa, Buzawa & Stark 2017; Hamel 2011). Indeed, the U.S has documented a dramatic increase in the arrest of women for family violence in recent decades (Hamel 2011; Miller 2001; Goodmark 2004). For example, in California between 1987 and 1997, the rate of arrest of women for domestic violence rose by approximately 500% (Hamel 2011). Whilst inadequate policing is a key explanation for this increase (Dugan 2003), so too is systems abuse. When the police attend a family violence incident where it is not clear who the primary aggressor and who the genuine victim are, they may be easily manipulated by the perpetrator and encouraged to arrest the victim (Hovmand et al. 2009; DeLeon-Granados 2006). As part of their 'model of victims' arrest', Hovmand et al. (2009, p. 170) refer to a 'cross-over mechanism', which describes a possible scenario where a victim may be arrested:

A corollary to the cross over mechanism is that the primary aggressor's criminal behaviour has declined to

the point where the primary aggressor is less at risk of arrest than the primary victim, perhaps by relying more on tactics such as psychological abuse and isolation to maintain control than criminal behaviour.

Research also demonstrates the role of systems abuse within the civil law system in the U.S. Miller and Smolter (2011, p. 640) emphasise the ways in which vexatious domestic violence protection orders affect the women whom they are made against:

Women experience civil protection orders a tools in the abuser's arsenal calculated to wear them down, whittle away their self-esteem, and create hardships as they work to negotiate their lives absent of men's violence, power and control.

Other vexatious litigations have also been noted to harshly effect female victims, and are most often related to custody of children and property (Miller & Smolter 2011)

### Systems Abuse in Australia

The 2017 National Domestic and Family Violence Bench Book recognised systems abuse as a form of family violence. They describe the process:

Perpetrators of domestic and family violence who seek to control the victim before, during or after separation may make multiple applications and complaints in multiple systems...in relation to a protection order, breach, parenting, divorce, property, child and welfare support and other matters with the intention of interrupting, deferring, prolonging or dismissing judicial and administrative processes, which may result in depleting the victim's financial resources and emotional wellbeing, and adversely impacting the victim's capacity to maintain employment or to care for children (National Domestic and Family Violence Bench Book 2017).

Studies have suggested that vexatious intervention/protection order applications are a key method of systems abuse for perpetrators in Australia (Jillard & Mansour 2014; Mansour 2014; RCFV 2016). Jillard and Mansour (2014), whose research was conducted on behalf of Women's Legal Services NSW have highlighted that the majority of women who are listed as respondents to Apprehended Domestic Violence Orders (ADVOs) are in fact the primary victim of abuse in their relationship with the applicant. It has also been acknowledged that it is common for male perpetrators to encourage the police to enforce an interim intervention order against a female victim (RCFV 2016). This interim order will see her forced to leave the house, and will also serve as an application for a permanent order, to be decided by the courts. Female victims who have been misidentified as primary aggressors and subsequently have intervention order applications made against them are very likely to consent to the order due to a variety of factors including; financial strains; intimidation from the perpetrator; and limited access to adequate legal representation (RCFV 2016; Mansour 2014; Reeves 2017).

Family law is also a key location of systems abuse. The Victorian Royal Commission into Family Violence (2016) acknowledged a link between family violence offenders and vexatious litigation. Indeed, the Family Court deals with the most cases of vexatious litigants compared to all other courts in Australia (Hosiosky 2014). Fitch and Easteal (2017, p. 106) have argued that 'some vexatious

litigants appear to be using the system as a vehicle for control and harassment'. As with systems abuse generally, Fitch and Easteal (2017, p. 107-108) lists the effects of vexatious litigation against a victim of family violence by an abuser as:

- Psychological stress
- Significant legal costs
- Children being exposed to harmful environments
- Feelings of depression and oppression
- Triggering of mental health issues
- A loss of faith in the justice system.

As highlighted by Easteal, Young and Carline (2018), women experience a distinct disadvantage in regards to family law. This disadvantage stems from the patriarchal operation of the legal system, specifically relating to economic inequality and gender communication differences, which will tend to place pressure on the female to settle cases, going against her own best interests and that of her children (Easteal, Young and Carline 2018).

### Implications

Female victims of family violence who are incorrectly captured as perpetrators by the system have their experiences of victimisation de-legitimised and are denied protection from an abuser. Systems abuse reflects a two-fold problem whereby male perpetrators of family violence manipulate the various limbs of the justice system, alongside the issue of the gatekeepers of the system (e.g. police and magistrates) who fail to recognise systems abuse when it is before them. Studies have suggested that men who do commit systems abuse, do so on multiple occasions (sometimes to multiple victims) because they have been successful in their manipulation the first time (DeLeon Granados 2006). Family violence training for police, magistrates and other involved parties in this area is currently both inadequate and inconsistent, and in order to move forward, training needs to improve drastically (RCFV 2016). Systems abuse, like emotional and financial abuse, needs to be properly recognised as a form of family violence as it has the potential for devastating effects on the life of the victim. There is a need for further research on this area in order to inform best practice for key stakeholders and to place systems abuse on

Australia's family violence agenda.

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