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# Family Law as a determinant of child health and welfare: shared parenting, breastfeeding and the best interests of the child.

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## **Abstract:**

In July 2006 the Australian Government introduced the *Family Law Amendment (Shared Parental Responsibility) Act 2006* (Cth) (the *Shared Parental Responsibility Act 2006*) which puts in place a legal presumption of shared parental responsibility for children after separation and which emphasises 'equal time' parenting arrangements. Equal time places expectations on both parents to participate—equally—in child care regardless of the child's age. Breastfeeding is optimal for infants and requires the infant and mother to spend significant time together. The expectation of equal time or substantial and significant parenting arrangements becomes problematic when considering breastfed children. This article begins a discussion about the decisions regarding shared parenting of breastfed children made as a consequence of the 2006 amendments that do not always appear to be in the best interests of children's health and wellbeing. The paper argues that the *Shared Parental Responsibility Act 2006*, and the decisions made, can work at a macro-level to produce social and health disparities for these children.

Decisions about parenting of children under the *Family Law Act 1975* (Cth) are required to be made with the 'best interests of the child' as the paramount consideration; a central tenet of the Act which remains in place following the *Shared Parental Responsibility Act 2006*. The application of this requirement has particular implications when the child is very young and pre-verbal and is being breastfed by the mother. There appears to be a tension in determining the best interests of the child in cases where children are breastfed and their father is seeking equal or substantial shared care arrangements. Breastfeeding has significant physical, psychological, financial benefits to individuals, families and society, and is an important public health practice. Shared parenting orders, made since the *Shared Parental Responsibility Act 2006*, have the potential to separate breastfeeding mothers and their child which would impact on women's ability to breastfeed, influencing their perseverance and ultimately breastfeeding duration (Brodribb 2004). This outcome is arguably not in the best interests of the child. Two cases from an on-going study to investigate breastfeeding women's experiences of the implementation of the Act will be presented. These examples will illustrate that the court made decisions for

breastfeeding mothers are not consistent and compromise the ability of women to continue breast feeding. From the women's perspective this is viewed as not in the best interests of their infants. Further questions are raised about the best interests of children when domestic violence and/or abuse are present. The impact of this new law on the continued breastfeeding of very young children is an unacknowledged consequence and a public health concern.

Keywords: Sociology, Family Law, breastfeeding, best interests of the child

## Introduction

Health is a basic human right under Article 25 of the *Universal Declaration of Human Rights* (Office of the United Nations Commissioner for Human Rights 1948). As a signatory, Australia is committed to implementing principles and practices that secure the rights of health and well being for all. Indeed the basic human rights recognise the right of every person to enjoy the highest attainable standard of physical health, with special attention to increased healthy childhood development (Bar-Yam 2003). Health is undoubtedly a social, economic and political concern (Baum 2008). Furthermore, child health is a major public health concern, as promoting and improving child health will have long term ramifications for the individuals concerned, the next generations and society as a whole.

The social determinants of health provide a framework in which we can consider health as a social issue. However the recognised social determinants (Wilkinson and Marmot 2003) identify the broad determinants and do not identify individual aspects that impact on individuals. Indeed Schofield (2007:108) argues that the evidence that underpins Marmot and Wilkinson's (2006) social determinants of health, 'rarely shows the mechanism by which the social produces the problem'. This paper endeavours to demonstrate that the implementation of Australia's *Shared Parental Responsibility Act 2006* can impact on children's health and well-being through imposing limitations on breastfeeding. Furthermore, we suggest that the interpretation of what constitutes the best interests of children is contentious, and even though the Act provides detailed guidelines to assist with determining this, remains open to subjective interpretations.

In order to explore the causes of these social determinants of health, Baum and Harris (2006:164) suggest we look 'upstream to the social and economic structures that shape our chance of health and illness'. This paper opens for discussion the social-legal dimension of the structures that shape this aspect of children's health experience. The values and assumptions inherent within the *Family Law Act 1975* (Cth) as amended by the *Shared Parental Responsibility Act 2006* along with cultural and societal perceptions of breastfeeding shape these decisions. The paper outlines the recent amendments to the Act, discusses the role of breastfeeding as a health determinant for infants and children and then discusses the Act in relation to determining the best interests of breastfed children. Two cases from an on-going study of breastfeeding women's experiences of determining shared parenting arrangements through the family law system are presented to show how the decisions are both inconsistent and problematic for women who wish to continue breastfeeding their infants. Questions about the determination of the best interests of children are raised.

### **Shared parenting and amendments to the *Family Law Act 1975* (Cth)**

Following separation, couples who are unable to reach amicable agreements may choose to resolve these through the family court system. The *Family Law Act 1975* (Cth) is the legislation that deals with private family law matters, including separation and parenting arrangements, including parental responsibility, and the distribution of the child's time between parents (Fehlberg *et al* 2008). In July 2006 the Australian Federal Government introduced new changes in the *Shared Parental Responsibility Act 2006* which put in place a legal presumption of shared parental responsibility for

children after separation with an emphasis on 'equal time' parenting arrangements (Atmore *et al* 2005; Chisholm 2006). This new law places expectations on both parents to participate—equally—in child care regardless of the child's age. Under this regime, couples who are unable to determine their post separation parenting arrangements without intervention are being encouraged (in mediation) or ordered (in court) to undertake shared parenting arrangements that may involve the child spending equal or substantial and significant time with each parent.

Fehlberg *et al* (2008:236) discuss the intricacies of the new legislation that provides for shared parenting decisions to be made if in the children's best interests and reasonably practical, but warn 'that the subtlety of these provisions will be lost in the simpler message that parents must share parenting now'. If parents cannot reach decisions about the shared care of their children, any imposed shared parenting is unlikely to lead to a decrease in parental conflict. In most cases the couple remain in continuing conflict and indeed the animosity and stress of the situation leads to escalation of this conflict. Furthermore, such legal expectations are not congruent with many family arrangements even before separation let alone after (Atmore *et al* 2005). It is unlikely that in the 'normal' Australian nuclear family that the mother and father have a 50% primary responsibility for the care of their children. The work of parenting is shared, but in ways other than 50:50 contact. Indeed there is evidence to show that fathers spend little time in sole charge of their children, with mothers taking the majority of child care duties (Fehlberg *et al* 2008:228).

Smyth (2004; also cited in McIntosh and Chisholm 2007) has shown that in the past 'shared care' following separation was rare and viable for only a small and distinct group of families. The factors identified for this to occur include: geographical proximity; the ability of parents to get along sufficiently well to develop a business like working relationship; child-focused arrangements which keep the child from being stuck in the middle; commitment by all parties to make shared care work; family friendly work practices for both mothers and fathers; financial comfort for both mothers and fathers; and shared confidence in the father's ability in parent craft (Smyth 2004; also cited in McIntosh and Chisholm 2007). This would be an unlikely list of traits of broken families in conflict. Furthermore, research discussed by Parkinson and Behrens (2004:872) show that children raised in shared parenting situations fare much worse than children raised in single parent situations when there is continued conflict in the parental relationship.

With the focus of this new amendment being on shared-time, there is significant cause for concern that breastfeeding is being overlooked or even ignored during the decision processes. It is concerning that this valuable health resource is being undermined for the sake of ensuring equal or significant time with both parents. The recent national inquiry into breastfeeding received submission outlining these concerns (see National Council of Single Mothers and their Children Inc. 2007; Bailey 2007). The inquiry concluded that the Attorney General investigate whether breastfeeding was given suitable consideration in the implementation of shared parenting arrangements (House of Representatives 2007). This recommendation could indicate that the inquiry received significant evidence in addition to the written submissions which suggest that breastfeeding is not being duly considered. The assumption therefore is that breastfeeding is optimal for the nutritional and developmental needs of infant children – and therefore should be considered more directly when determining the best interests of the child under the *Family Law Act 1975* (Cth).

## **Breastfeeding as a determinant of child health and well being**

Food, or more specifically one's diet is a principal determinant of health (Marmot and Wilkinson 2006). Conversely, inappropriate nutrition is a major burden of disease and therefore a significant public health issue (Marmot and Wilkinson 2006). Breastfeeding is the best form of infant nutrition and is supported worldwide (Labbok 2006; Brodribb 2004). The World Health Organisation recommend exclusive breastfeeding for the first 6 months of life and continued breastfeeding for 2 years and beyond to improve the health and well being of children but to also have a significant role in reducing health care costs from ill health (WHO 1989).

Breastfeeding is recognised internationally as the 'physiological standard' for growth and development for human infants (Brodribb 2004:15; Lawrence and Lawrence 2005). Indeed breastfeeding and breast milk are essential components for normal physical and cognitive development, with both immediate and long term advantages. The benefits of breast milk for human infants are well documented and include optimal nutrition, enhanced immunity, optimal neurological development, reduced risk of respiratory and gastrointestinal infection and reduced long term chronic conditions such as atopy and asthma (Akre 1989; Brodribb 2004). Furthermore, breastfeeding has many positive effects for the health of women, including reduced risk of postpartum haemorrhage, birth spacing, and reduced risk of breast and ovarian cancer (Labbok 2001; Brodribb 2004; Lawrence and Lawrence 2005). Breastfeeding is an important component of mother-infant attachment and bonding and is a valuable resource for societies worldwide to maintain (Minchin 1987; Riordan 1997; Palmer 1988). The alternative to breastfeeding is formula feeding. Breastfeeding and feeding with infant formula are not equivalent, and it is now recognised that there are risks of not breastfeeding. Infant formula has been directly attributable to increased infant morbidity and mortality around the world (Bar-Yam 2003; NHMRC 2003b).

Whilst breastfeeding is the best way to feed human infants, there are alternative infant formulas on the market and the choice of how to feed their own child rests with the mother and father. Breastfeeding is a natural component of the reproductive ability of women, and all women have the right to embrace their reproductive abilities as they choose (Labbok 2006). It is therefore clear to say that mothers have a right to breastfeed their own children for as long as they choose (Labbok 2006). Indeed mothers should remain free to make informed decisions to feed their infants as they wish, without the encumbrance of outsiders interfering with this right (Kent 2004; Akre 2006). Therefore women should not be legally obligated to refrain from or to prematurely cease breastfeeding.

The decision to breastfeed or not is integrally connected with an individual's values and beliefs about nutrition, infant care and parenting. However the primary barrier to breastfeeding is society—'from individuals attitudes and how they are formed, to unsupportive health services, to the multiple unhelpful ways society is often structured' (Akre 2006:20). Societal attitudes and values about breastfeeding are responsible for producing and sustaining the complex systems that interfere with an individual's choice on infant feeding (Akre 2006). When considering individuals' rights and the best interests of children, it is therefore a societal responsibility to support breastfeeding whenever and however possible (Labbok 2006). Indeed support and

encouragement from family and friends are beneficial, but it is broader than merely family support. Society, through cultural practices, government strategies and legislation has an important role in protecting breastfeeding.

The Australian Government has an endorsed public health nutrition policy, known as the Australian Dietary Guidelines which were last updated in 2003. In both the guidelines for adults (NHMRC 2003a) and for children (NHMRC 2003b), breastfeeding is espoused as the optimal food for children, exclusively for the first 6 months of life and then continuing for at least 12 months and longer, as long as mutually desired by mother and child. Indeed, the guidelines 'encourage everyone to support and promote breastfeeding' (NHMRC 2003a:viii). Furthermore organisations such as the Australian Medical Association, the Royal Australasian College of Paediatrics, the Australian College of Midwives and the Dieticians Association of Australia all pledge support for breastfeeding. The 'total value of breastfeeding to the community makes it one of the most cost effective primary prevention measures available and well worth the support of the entire community' (NHMRC 2003a:240).

### **The Best Interests of Children**

The *Family Law Act 1975* (Cth), as amended by the *Shared Parental Responsibility Act 2006* requires advisers (legal practitioners, family counsellors and family dispute practitioners) to advise clients in the development of a parenting plan (Fehlberg *et al* 2008). Here the Act provides detailed and elaborate guidelines in relation to determining the best interests of the child (McIntosh and Chisholm 2007). These provisions also govern the decision making process of the courts. As mentioned above, the court's task is to make the order which will be in the child's best interests. In determining what form that will take for each individual child, a variety of both 'primary' and 'additional' considerations must be used. The benefit to the child of a meaningful relationship with both parents, and protection from violence, neglect and abuse are 'primary' considerations, with all other considerations being 'additional'. Additional considerations include some factors going to the strength and nature of the parental relationships with the child, parenting ability of each parent, and their willingness to encourage and facilitate the child's relationship with the other parent. Others are more specific to the needs of the individual child and each parent's awareness of and ability to meet those needs. Breastfeeding is not mentioned specifically, although it can and has been raised under several criteria, such as through considering the relationship of the child with the mother, and the impact of changed circumstances on the child, which can include the impact of separation from either parent. Necessarily, the application of the various factors and content of the actual order made in each case involves wide discretion on the part of the Judge or Magistrate, and will vary in each case. There are no criteria that can be applied to determine what a 'meaningful' parent-child relationship actually is, as that will depend on the circumstances of each particular case, but the Act suggests that it should focus on quality rather than quantity (Fehlberg *et al* 2008:242).

Recent evidence discussed by McIntosh and Chisholm (2007) indicates that there are a range of risk factors that may impact on whether or not the best interests of the child will be best served by shared care arrangements. In relation to parents, their research identified the following parent risk factors:

- Low levels of maturity and insight;

- A parent's poor capacity for emotional availability to the child;
- Ongoing, high level conflict;
- Ongoing significant psychological acrimony between parents;
- Child is seen to be at risk in the care of one parent

Similarly, identified child risk factors are:

- Under 10 years of age
- The child is not happy with a shared arrangement;
- The child experiences a parent to be poorly available to them.

Given that a significant proportion of cases that come before the family law system involve violence and abuse (75% in Family Court of Australia 2004), the imperative to protect children is paramount. Furthermore there is plenty of evidence to indicate that separation from a partner can place women and children at risk of greater levels of family violence (Hume 2008). Indeed the Act clearly states that if there are reasonable grounds to believe that violence or abuse are evident then the shared parental responsibility presumption does not apply (Fehlberg *et al* 2008). However, Fehlberg *et al* (2008:339) go on to suggest that because of the processes involved, women will be too scared to disclose domestic violence due to a fear of the consequences.

The question of how to determine the best interests of very young children, particularly if they are pre-verbal, poses even more complex considerations. The healthy emotional development of infants depends upon early experiences of a continuous, emotionally available care-giving relationship that enables the development of organised attachment (McIntosh 2006). Young children's attachment is likely to be poorly affected when 'that infant does not have a continuous experience of reliable care with either parent' (McIntosh and Chisholm 2007:4). Indeed, according to McIntosh (2006), frequent moving between two parents can interrupt the infant's relationship with the primary carer when there has been one. Additionally, parental conflict is associated with more likelihood of harsher styles of discipline and diminished emotional responses which are associated with emotional insecurity and social withdrawal of infants (McIntosh 2006). McIntosh and Chisholm (2007) conclude that there is evidence that caution is required in recommending substantial shared care for children under four, and that this is even more a consideration in high conflict divorce situations – those that are most likely to be in the family law system anyway.

Given the evidence referred to above, it would be expected that infants, and particularly breastfeeding infants, would not be ordered into substantial shared parenting arrangements. However, many infants regularly are, and therefore it can be argued that substantial contact with fathers is almost always seen as being in the best interests of children (McIntosh and Chisholm 2008). This is despite wide recognition that breastfeeding is an important determinant of children's health. Accounts of women seeking decisions on parenting arrangement for their breast fed infants through the family law system demonstrate that the best interests of the breast fed child are not well understood. Furthermore, the interpretation of the Act on this matter appears to be inconsistent, and is open to subjective evaluation by those charged with assisting families in these matters. We illustrate this with reference to two cases taken from our current research.



## Contemporary women's experience

A qualitative interpretive study is currently being conducted to explore women's experiences of breastfeeding through separation and legal proceedings since the amendments under the *Shared Parental Responsibility Act 2006* came into force. The four aims of the project are: to explore the impact of the new 'equal time' parenting arrangements on breastfeeding women; to identify the ways women manage their breastfeeding in shared parental arrangements of their breastfed child/children; to explore women's experience of the family law system related to their breastfeeding parenting role with their child following separation and to identify issues that effect women's care of their breastfed child. Currently there are fifteen women recruited—through community based women's health networks—into the larger study from five states of Australia. They participated in a semi-structured telephone interview and responded to questions related to their breastfeeding experience in relation to separation and engagement with the family law system. Two cases from this study are discussed here to illustrate the concerns raised:

### **Case 1: Georgianna**

*Georgianna was subjected to domestic violence and separated from her husband when their son was seven months old and breastfed. They were in mediation regarding the care of their son when her husband unexpectedly initiated proceedings under the family law system. The magistrate ordered shared parenting one week with the mother, and one week with the father – their son was then 11 months old. The magistrate said that the baby could have his nutritional needs met elsewhere (other than breastfeeding). Georgianna was committed to breastfeeding for the health benefits it offered her son and the comfort and attachment it provided them both. Georgianna's milk supply became erratic as a result of these week long absences. She said "I thought the magistrate had taken my universal right away to breastfeed". She said "I have breasts. I have breasts not for passion. I have breasts to nurture to my son." Georgianna had always supported the father's involvement in their son's care and prior to the court order had even expressed milk to enable them to have overnight visits. Though on overnight visits, the baby's father could not manage the night waking of this breastfed child and would sleep at Georgianna's so that she could get up during the night for breast feeding. At other times Georgianna would feel annoyed when her husband said he had thrown the breast milk out because the baby didn't need it. When her breasts became sore and lumpy and hard during the week long absences, her doctor suggested that maybe it was time to cease breastfeeding. Georgianna believes strongly in breastfeeding and despite these barriers, breastfeeding continued regularly during the week her baby was with her. The violence towards Georgianna was extreme and required police involvement. There were subsequent court attendances and after six weeks, the magistrate ordered half a week to each parent, and ordered that the baby was to be with his father every weekend even though Georgianna worked during the week. Georgianna said that she was bullied and harassed by her husband, who was not supportive of breastfeeding and claimed she was an unsafe mother. At the time she was interviewed the baby was 15 months old, was breast fed when he was with her for half a week and then cup fed cows milk when he was with his father. This child continued to enjoy breastfeeding when he had the opportunity and gave no indication of wanting to cease. During the court proceedings, Georgianna was advised by many people to get a lawyer. She asked "If this whole system is supposed to be in the best interests of the child, why do I need a lawyer?" Georgianna was not against shared parenting, saying: "Every child needs both sets of parents in their life. I'm not disputing that. But I also think that they recognise a woman's role in a child's early life, the first three years". Breastfeeding caused significant contention in*

*developing parenting arrangements and Georgianna's husband had never been supportive of her breastfeeding 'ever'.*

### **Case 2: Trish**

*Trish separated from her husband when their only child was 5 months old. Throughout their relationship Trish experienced verbal and financial abuse and threats of physical violence, which led to their separation. Both Trish and her husband agreed that contact with both parents was important for their son, and from the time of separation they negotiated arrangements for this to occur. Despite these personal arrangements Trish's husband sought longer access and they ended up in court when the baby was 9 months old. At the time of the interview Trish's baby was 10 months old and the court ordered shared parenting arrangement was for the baby to have day long visits with his father 7 days per fortnight. This was ordered to be alternate days even though this couple now lived one and a half hours apart. In order to comply with the shared parenting order, they each travel the return journey which is three hours of travel on each access day. Furthermore, the baby spends three hours every alternate day restrained in a car seat. This has resulted in an all consuming lifestyle, financial and social stress and has negatively impacted on Trish's ability to seek part time employment. Whilst the father applied for the child to spend time with him overnight, the magistrate ruling on this case stated that he would not give 'overnights to a 10 month old baby who's also being breastfed'. In addition, the magistrate ordered that the mother provide expressed breast milk for each access visit. Trish is a strong believer in breastfeeding being best for her son, however the stress of separation, maintaining the alternate day access visits and trying to provide expressed breast milk has had a negative impact on her breast milk supply. Additionally, Trish says her husband has 'issues with breastfeeding'. Stating, 'he just thought it was quite disgusting, which is strange because before the birth, he knew that I was planning on breastfeeding and he didn't really seem to have any problems with it then'. Despite being provided breast milk, Trish's husband has difficulty in getting the baby to drink it from a bottle or cup. Trish recalled many occasions when 'he was starving when he saw me and I had to pull over on the side of the road and breastfeed him, he was that hungry'. To enable the achievement of the parenting arrangement that was ordered, Trish was travelling the 1 ½ hours each way on alternate days, expressing when her baby was with his father, and breastfeeding him on the days he was in her care. At 10 months of age this child has no consistency in his primary caregiver from one day to the next, and his daily nutrition is inconsistent.*

## **Discussion**

The experiences of Georgianna and Trish demonstrate the inconsistent decisions that are being made in relation to breastfeeding women and children. Whilst Georgianna and Trish both had shared parenting court orders regarding their infant when aged less than 12 months, both orders had different but negative implications for their continued breastfeeding. Given that both women intended to continue breastfeeding beyond 12 months it was uncertain what weight was put on breastfeeding in the context of the 'best interests' considerations. Georgianna's experience has demonstrated that the magistrate considered the child to be of sufficient age to manage without the nutrition of breastfeeding. There was no consideration of non-nutritional benefits of breastfeeding and 50:50 parenting was initially implemented. There was a disregard for Georgianna's intent to continue breastfeeding. For Trish, the magistrate considered the value and importance of the breastfeeding as being in the best interests of the child, however ordered alternate daily visits with the father,

without recognizing the large amount of travel time both parents and the infant had to endure, and the impact this would have on the management of breastfeeding. It is well known that mother-infant separation has a significant negative impact on breastfeeding (Brodrigg 2004). These women's experiences are but two of fifteen gathered, most of which demonstrate the tensions that arise when decisions are made regarding shared parenting of infants who are breastfed.

These women described breastfeeding as being the best nutrition for their child, offering additional benefits of security and comfort. The women described in detail their child's nutrition and expressed concern and worry about the child's nutritional management when not in their care. The women experienced many people undermining breastfeeding and giving advice claiming the inappropriateness of their breastfeeding for infants older than 6 months of age. The 'need' for shared parenting appeared to be prioritised above the benefits of breastfeeding beyond 6 months. These women felt baffled as to why so many people thought breastfeeding could be undermined so easily for other—less beneficial—forms of infant nutrition. These women described strongly a link with a gender role of being the primary provider of adequate and nourishing nutrition for good health, as well as breastfeeding being a means of securing good attachment and a stable relationship with their child. From the experiences of these mothers, it appears that their partners did not share the same commitment to breastfeeding that they did – indeed there was hostility towards breastfeeding and these fathers had different understandings on the nutritional needs of infants. Women in the current study described receiving verbal abuse about their breastfeeding from their estranged partners and family. This apparent gender difference with respect to what is a significant child health determinant invites further investigation.

The experiences of these women suggest that there are no clear guidelines on optimal duration of breastfeeding to guide decision making in shared parenting arrangements. Whilst the World Health Organisation's (WHO 1989) guidelines recommend exclusive breastfeeding for the first six months and continued breastfeeding for two years and beyond, it appears parenting decisions may consider only the first component in relation for younger infants (exclusive breastfeeding less than 6 months of age), and not use the guidelines in their entirety to guide decision making throughout the family court system. Breastfeeding beyond 12 months is not the norm in contemporary Australian society. There is a small but dedicated population of women in Australia choosing to maintain breastfeeding until child led weaning, which is consistent with biological norms (Brodrigg 2004). Recent data from the Longitudinal Study of Australian Children (2007) shows that 28% of children at 12 months of age were still breastfed. It appears that the legal advisers, family dispute resolution advisers and judiciary have difficulty in situations involving breastfeeding infants, and do not know how to advise mothers regarding the value and importance to be placed on breastfeeding, and in particular breastfeeding beyond 6 months. This may be because extended breastfeeding is not acknowledged practice in our society, and is often done discreetly and not made public (Gribble 2006). There is a relationship between formal law and social norms and the law must broadly align with society attitudes and behaviours (Fehlberg *et al* 2008). However when there are such diverse social views and practices around breastfeeding it is not surprising that inconsistency exists.

The stories of Georgianna and Trish both show that these women are not averse to both parents having a meaningful relationship with their child, but believe that contact

needs to be managed in a way that supports and protects breastfeeding. Both of these mothers felt strongly that breastfeeding offered significant long term benefits for the health and well being of their children. Prior to the court orders both Georgianna and Trish had negotiated contact times with their ex partners and provided breast milk to feed their child. This is evidence of their commitment to breastfeeding and to continued father contact. If the focus of parenting arrangements were indeed child centred, then surely the stable food supply, as a basic human need, would support the protection of breastfeeding. However, there is a significant shift and 'pro contact culture' in the family court system, which is affording greater contact for fathers (Fehlberg *et al* 2008) and earlier overnight access. Biringen *et al* (2002) argue that while father-infant contact is important, early overnight visitations may be detrimental to the child's attachments to both parents.

For women who choose to breastfeed, the act of breastfeeding is integral to their stable and secure relationship with their child. Forcing a mother and child to cease breastfeeding may have significant negative psychological consequences (Montgomery *et al* 2006). Furthermore there is evidence that breastfeeding is associated with resilience against the psychosocial stress linked with parental divorce/separation (Montgomery *et al* 2006). It is therefore arguable that breastfeeding should be protected in such situations. Breastfeeding is not only offering nutrition, but also comfort and security for both mother and child which do not appear to be considered in court decisions.

The presence of domestic violence adds another layer of complexity to shared parenting decision making. In the *Family Law Act 1975* (Cth) the presumption of equal shared parental responsibility does not apply if there are reasonable grounds that domestic violence exists (Fehlberg *et al* 2008). Consequently, equal time and substantial and significant time parenting arrangements do not have to be considered in those cases. This raises additional questions about what constitutes violence or abuse and how this is assessed by legal advisers in the absence of prior police records. Braaf and Sneddon (2007) advocate the introduction of routine screening and risk assessment in all cases before the family court. Having violent tendencies puts in doubt a mother or fathers' ability to parent, however Fehlberg *et al* (2008) demonstrate that in such cases, contact is often ordered. Miller (2002) argues that an individual's fitness to parent is insufficient, and that it should be the child's reaction to each parent that determines the better primary care provider. More emphasis needs to be placed on breastfeeding, since these children need all the help they can get in the context of the violent/conflicted care arrangements. The relationship between violence and breastfeeding, and the processes that take insufficient notice of either will be more deeply explored in the full report of the research.

Both Georgianna and Trish described fleeing from violent or abusive situations. Georgianna spoke of the alienation she experienced in court with claims of her being a bad mother. Both women denied experiencing screening or assessment for domestic violence. Both women received parenting orders which included their child spend equal or substantial and significant time with their fathers. These women did not fear for the safety of their children, and indeed encouraged father contact. Nevertheless, the frequent contact during handovers resulted in escalation of conflict and tension between the parents and placed them at increased risk for violence. Contact and handover times with ex partners are known to be periods of significant risk for women

and children when the relationship had previously been violent (Braaf and Sneddon 2007).

Blane (2006) argues that while no one factor is responsible as a major health influence, a chain of minor events may be advantageous or disadvantageous to health. Factors that produce health inequalities can be intercepted through appropriate social structures, with the emphasis on prevention of the accumulation of further disadvantage (Schofield 2007). We believe that promoting breastfeeding is an important way of ensuring children's best interests. Breastfeeding improves the infant's health and ensures a secure attachment with the mother, without precluding regular contact with the father and extended family. Breastfeeding should not need to cease in order to enable regular contact with both parents. Supporting breastfeeding, even at the expense of equal or significant time with the other parent, would go some way to preventing the accumulation of further disadvantage as described by Blane (2006).

## **Conclusion**

Breastfeeding is an important public health issue that should be protected. The experiences of Georgianna and Trish have been used to demonstrate issues that can arise for breastfeeding mothers and their infants from decisions made in the courts in response to the *Shared Parental Responsibility Act 2006*. By enforcing long day and overnight separations through interpretation and application of family law, we argue that there is potential for an unintended negative impact on the determinants of child health and wellbeing. This paper argues that breastfeeding is not adequately considered when determining the best interests of children in shared parenting arrangements. Infant attachment, security and psychological well being is equally as important to nutrition provision, and breastfeeding is one health behaviour which has the potential to positively impact on both. For these reasons, breastfeeding should be more carefully considered in decisions under the *Family Law Act 1975 (Cth)*.

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