

# Submission to the Family Law Council

from

## Irabina Autism Services

According to Irabina (a well-credentialed service providing support to families and children with Autism Spectrum Disorder (ASD) in Victoria) over 80% of marriages where one or more children are diagnosed with ASD end in divorce. This creates a particular problem under current Family Law because this group of children cannot be treated in the same way as non ASD (neurotypical) children due to the specific characteristics of ASD. The primary issue is that the challenges and problems peculiar to ASD children must be understood and the wellbeing of the ASD child must become the primary concern when deciding custody arrangements. In particular the assumption under current Family Law that 50% shared custody and parental responsibility is the ideal must be reconsidered and moderated in terms of a thorough understanding of the specific child's particular ASD characteristics that are unique to that child. The primary concern informing a custody decision must be the needs of the ASD child not the needs or desires of the parents.

One of the main issues that must be addressed is that in most cases of disputed custody both parents do not have a mutual and collaborative understanding of the ASD needs and challenges of their child/children. This is frequently reflected in their varying demands for custodial arrangements. Both parents and court officials must have a comparable understanding of the child's ASD and therapy requirements.

Not only is it imperative to understand the particular ASD characteristics of the child who is the centre of the custody dispute but also in addition it is vital that both the chronological and emotional ages of the child be taken into account. Chronological age does not equate to emotional age for the majority of ASD children whereby emotional age is usually significantly lower than chronological age.

Children on the Autism spectrum typically have social/emotional understanding and capability 2 - 4 years below their biological age. Their skills and social/emotional understanding are splintered and do not necessarily develop in the same trajectory as neurotypical or non ASD children. An ASD child does not develop in the same progression as his neurotypical peer and does so much more slowly than a non ASD child of the same age. This is particularly so for very young ASD children where social and emotional development can lag well behind their neurotypical peers.

The developmental stage of the ASD child must also be considered in a custody dispute. It is well established that Early Intervention therapy for ASD children has a critical window of opportunity ranging from 0 to 14 years to optimise the development of social and emotional skills for children on the ASD spectrum.

For those ASD children who are involved in intervention therapy and programs it is imperative for the child's future that these programs are consistently provided, supported and adhered to and continue uninterrupted in the child's home environment in order to ensure that the child gets the best opportunity to succeed in life and achieve their full potential to live as independent a life as possible. As a parent of an Autistic child my prevailing objective is to ensure that my child receives every opportunity to actualise his potential in order to achieve adult independence. Optimising independence is vital if these children in order to avoid reliance on welfare in their adulthood.

It is critical that uppermost in any custody decision involving an ASD child that there is accurate knowledge of ASD and, in particular, an unbiased clear understanding of the particular child's ASD issues. Due credence and sufficient time must be afforded expert advice and reports in order to determine what arrangements are in the best interests of the ASD child. It is my understanding that Family Law Courts are currently overburdened and backlogged due to the sheer volume of cases to be addressed. It may be of value to assign ASD custody cases to the Children's Court which appears to have more resources to deal with such complex and time consuming cases. It is imperative for the welfare of ASD children that best practice custody policy be established and unburdens judges and court psychologists of dealing with custody cases that require a high level of specialised knowledge and experience. It may be that such cases require the specialist skills of an independent ASD advocate to represent the child rather than, as currently happens, an independent lawyer with little knowledge of ASD who is appointed to protect the ASD child's interests.

One of the main considerations for a custody decision is the impact of change on the ASD child. It is well established that ASD children have a rigid aversion to, and inability to cope with change (DSM 5 Diagnostic Criteria). Autistic children don't do change. It is their Kryptonite. For many ASD children even the smallest change is debilitating and jeopardises their ability to cope with every day activities. It is important to understand the ASD child's need for sameness, their inflexible adherence to routines, need for ritualized patterns of verbal/nonverbal behaviour (e.g., extreme distress at small changes, difficulties with transitions, rigid thinking patterns, greeting rituals, need to take same route or eat food every day). Autism specialists unanimously advocate that the best practice for ASD children who struggle to cope with change is to provide an unchanging home with one primary carer in order to minimise the adverse impact of change on the child's impaired neurology and allow these children to use their limited cognitive resources to optimise academic and social learning particularly through their formative years.

Living arrangements where ASD children are forced to change their home environment and care providers in order to “enjoy” meaningful relations with both parents, is destabilising for any child, let alone an Autistic child who struggles to cope with change even routine change. Autistic children are already overburdened with social, sensory, and academic challenges and the added burden of a changing home life and carer, can cause debilitating distress which compromises the ASD child’s ability to learn, progress and actualise their potential during these critical formative years. Many High Functioning ASD children are schooled in the mainstream in order to optimise their chances of actualising their potential. However main stream education places huge social demands that can be debilitating for the child resulting in high levels of anxiety and exhaustion. What is a child’s medicine is simultaneously his poison.

Current Family Law is intended to protect and progress the best interests of the child. Therefore it is critical to understand how ASD impacts on a child and in particular the negative impact of change for autistic children particularly in their formative years. Positive learning and life experiences from 0 to 14 years of age are crucial in determining the ASD child’s future outcomes. In particular minimising change, in order to allow Autistic children the opportunity to actualise their potential and work towards achieving adult independence must be the prevailing consideration when determining the “best interests” of children with this disability in custody disputes.

The following are happy to be contacted to advocate for these views.

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**Characteristics of ASD (Diagnostic and Statistical Manual 5)**

ASD children have marked deficits in verbal and nonverbal social communication skills; social impairments apparent even with supports in place; limited initiation of social interactions; and reduced or abnormal responses to social overtures from others. For example, a person who speaks simple sentences, whose interaction is limited to narrow special interests, and how has markedly odd nonverbal communication. Inflexibility of behaviour, difficulty coping with change, or other restricted/repetitive behaviours appear frequently enough to be obvious to the casual observer and interfere with functioning in a variety of contexts. Distress and/or difficulty changing focus or action.

Without supports in place, deficits in social communication cause noticeable impairments. Difficulty initiating social interactions, and clear examples of atypical or unsuccessful response to social overtures of others. May appear to have decreased interest in social interactions. For example, a person who is able to speak in full sentences and engages in communication but whose to-and-fro conversation with others fails, and whose attempts to make friends are odd and typically unsuccessful.

Inflexibility of behaviour causes significant interference with functioning in one or more contexts. Difficulty switching between activities. Problems of organization and planning hamper independence.