

## FAMILY LAW INSIGHT SERIES

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### Listening to Children Properly: Developmental Psychology and the Weight of Their Views

Under s 60CC(2)(b) of the *Family Law Act 1975* (as amended by the *Family Law Amendment Act 2023*), courts must consider “any views expressed by the child”, while weighing those views in light of the child’s age, maturity, and level of understanding. However, a child’s stated preference is not, in itself, determinative or always reliable. Its probative value depends on the context in which it was expressed, the child’s developmental capacity, and the methods used to elicit and interpret it.

This tip sheet outlines key principles that should guide how children’s views are gathered, interpreted, and presented in psychological evidence. And what lawyers should expect from a well-reasoned, developmentally informed report.

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### 1. Developmental Capacity ≠ Informed Preference

Children's cognitive maturity must inform how their views are understood. A young child may be capable of articulating a preference, but that preference may not be reasoned, stable, or autonomous.

- Children under 7 are typically in Piaget's pre-operational stage. They tend to be egocentric, concrete in thinking, and focused on the present.
- Between 7 and 11, children begin entering the concrete operational stage, allowing more flexible reasoning but still limited future orientation and abstract thought.

#### What this means legally:

A younger child may state they want to live with a parent without fully appreciating the implications or permanence of that choice. Psychological reports must translate such statements into clinically meaningful interpretations, not treat them as equivalent to adult decision-making.

In a high-quality report, expect:

- An explicit statement regarding the child's stage of development and how it affects comprehension, perspective-taking, and judgment
- Caution around attributing autonomy to expressed preferences without supporting evidence of understanding
- Distinction between the capacity to express a view and the capacity to form a reliable, developmentally sound one

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## 2. Bonding, Alignment, and Emotional Influence

Children often express preferences shaped not by relational quality, but by emotional dynamics.

Alignment with one parent may reflect:

- Fear of loss or abandonment
- Desire to please the primary carer
- Emotional enmeshment or role reversal
- Avoidance of conflict or boundaries

This is particularly relevant in high-conflict or separation contexts. A child may reject a parent as a coping mechanism; not because the parent is unsafe, but because the child feels loyalty-bound to another adult or perceives that expressing affection for both is not permitted.

### What this means legally:

Courts must be cautious not to infer emotional safety or risk solely from a child's stated alignment. Reports must distinguish genuine relational security from behaviour that reflects pressure, conflict, or developmental coping.

In a high-quality report, expect:

- Evaluation of the emotional tone and quality of each relationship
- Evidence-based interpretation of why alignment may be occurring
- Reference to relevant literature on loyalty conflicts, role reversal, or psychological parentification

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### 3. Suggestibility and Interview Conditions Matter

Children's views are malleable. Suggestibility is heightened when:

- Questions are leading, emotionally charged, or repeated
- The child feels a need to please the interviewer or another adult
- Interview conditions are stressful or lack neutrality

Forensic interviewing requires methods that minimise influence and maximise reliability. This includes rapport building, open-ended questioning, and attention to nonverbal cues.

#### What this means legally:

If a report presents a child's view without detail on how the view was elicited, its weight is compromised. Interview methodology must be transparent and defensible.

In a high-quality report, expect:

- Description of interview setting, rapport, and questioning approach
- Consideration of whether the child was subject to scripting, coaching, or prior narrative repetition
- Analysis of consistency of views across contexts and informants

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#### 4. Surface Statements ≠ Substantive Preferences

Children's preferences are often shaped by immediate experience, not by a nuanced assessment of safety or care. A preference for a permissive parent, or rejection of a parent who enforces boundaries, may reflect short-term gratification rather than long-term emotional security.

For example:

- A child may say they want to live with the parent who *"lets me play my games all night"*
- Or they may avoid the parent who provides structure because *"they're too strict"*

#### What this means legally:

Preferences based on comfort or indulgence should be interpreted with caution. Reports should go beyond surface-level statements to analyse whether the child's views reflect genuine emotional security and developmental support.

In a high-quality report, expect:

- Contextualisation of the child's statements in relation to parenting behaviour and relational patterns
- Consideration of emotional safety, regulation, consistency, and attunement. Not just stated content
- Analysis of whether preference is adaptive, avoidant, or reinforced by adult behaviour

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#### 5. Ask the Right Questions

When assessing the weight to be given to a child's expressed views, lawyers should ask:

- *Was the child's developmental stage explicitly considered in forming conclusions?*
- *Were the views obtained through child-centred, forensically appropriate methods?*
- *Were alignment, suggestibility, or emotional influence considered and ruled out?*
- *Were the views interpreted in the context of relational quality, not just verbal content?*
- *Was the report transparent about limitations in the child's capacity or the assessment methodology?*

If the answer is "no" to any of these, the report's conclusions about the child's views may be overstated, misinterpreted, or open to challenge.

In a high-quality report, expect:

- Integration of psychological theory with observed behaviour
- Explicit, evidence-based rationale for the weight given to the child's views
- Recommendations that reflect both the child's preferences and their developmental reality