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More Than Milestones: What Cultural and Developmental Sensitivity Looks Like in Court

Under section 60CC(2)(c) of the Family Law Act 1975, as amended by the Family Law Amendment Act 2023, the Court must consider a child's developmental level and cultural background – not merely their chronological age – when determining best interests. This legislative update highlights the need to understand how children function in context, rather than applying one-size-fits-all expectations based on age alone.

Children mature at different rates and in different ways. Factors such as neurodevelopmental conditions, trauma history, caregiving quality, and sociocultural background all shape how a child communicates, behaves, and interprets the world. Similarly, culture influences how children express themselves, interact with adults, and understand family roles and relationships.

This tip sheet focuses specifically on how psychological reports can reflect developmental and cultural awareness, ensuring assessments are not only fair, but also meaningful. It outlines key features of high-quality reporting in this space and provides practical illustrations to assist legal professionals in interpreting the significance of what is (and isn't) included.

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1. Development and Culture: Why One Size Doesn't Fit All

Children's behaviour and developmental progress cannot be fully understood without considering the cultural and relational environment in which they are raised. Age provides only a rough reference point. Culture influences how children communicate, show emotion, express autonomy, and relate to authority. Similarly, trauma history, caregiving stability, and neurodevelopmental factors may all accelerate, delay, or distort typical developmental patterns.

A well-informed psychological report will reflect this complexity by:

Explaining how culture may shape developmental presentation.

A child raised in a collectivist culture may show high compliance, emotional restraint, or preference for family-centred decision-making. These behaviours should not be misinterpreted as social withdrawal, anxiety, or indecisiveness.

Example: A 9-year-old girl from a multigenerational household appears reserved during interview, offering minimal opinion when asked about living arrangements. A culturally informed report may recognise this as a respectful stance grounded in family norms, not a sign of confusion or emotional suppression.

Recognising normative variation in caregiving practices and developmental expectations.

Some cultures emphasise shared caregiving, spiritual explanation for behaviours, or later independence milestones. These should not be automatically equated with dysfunction or delay.

Example: A child still co-sleeping with a parent at age 8 may reflect family values around closeness and security, rather than dependence or a lack of boundaries.

Accounting for the impact of adversity or marginalisation on development.

Children who have experienced trauma, displacement, or systemic discrimination may show behaviours that reflect adaptation to chronic stress.

Example: A child from a refugee background demonstrates hypervigilance and mistrust in unfamiliar environments. These behaviours may be adaptive rather than pathological, and require sensitive interpretation aligned with lived context.

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2. Weighing Children's Views: Development Matters

Children's views are an important consideration in family law, but not all carry equal legal weight. The significance placed on a child's preferences must be informed by their developmental stage. Younger children are more susceptible to influence, less able to grasp long-term consequences, and often reason based on immediate emotional experiences rather than broader implications.

Why Development Shapes Reasoning

As children mature, so does their capacity for reflective thinking. Younger children (especially under 10) tend to base decisions on concrete factors like comfort, routine, or rewards. Older children are more likely to consider competing needs, long-term effects, and broader relational dynamics. These developmental shifts influence how independently and reliably a child can form and express views.

A developmentally informed report helps the Court determine whether a child's preference is:

- **based on independent reasoning,**
- **shaped by transient emotion, or**
- **influenced by adult dynamics.**

What a psychologically informed report is likely to include:

Analysis of the child's capacity to form meaningful preferences.

For instance, an 8-year-old who says, *"I want to live with Mum because she buys me toys"*, may reflect short-term thinking rather than caregiving insight.

Contextual detail about when and how views were expressed.

A child who discloses a preference only in emotionally charged settings may be expressing distress or loyalty conflict rather than genuine choice.

Attention to consistency and nuance.

A 13-year-old who can identify both strengths and concerns about each parent, and reflect on how those affect their life, shows more advanced reasoning and emotional clarity.

While children's voices should be heard, a developmentally sensitive report ensures those views are weighed with appropriate caution and clarity.

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3. Cultural Awareness in Reports: More Than Background Details

A psychologically sound report does not treat culture as a demographic checkbox. Instead, it actively considers how culture shapes the child's development, relationships, and experience of safety. This includes, but is not limited to, ethnicity. Culture also encompasses religion, language, disability, gender identity, sexuality, parenting roles, socio-economic background, and the impact of migration, racism, and other systemic factors.

Children do not develop in a cultural vacuum. Their ways of expressing emotion, communicating with adults, interpreting rules, and navigating conflict are all influenced by cultural norms. A child raised in a same-sex parent household, a multigenerational Aboriginal family, or a refugee background may all face different expectations and stressors. But these should be understood in context, not judged against narrow benchmarks.

A culturally informed report is likely to include:

- Clear discussion of how the child's cultural context may shape emotional expression, communication style, and responses to authority or separation.
- Consideration of family structures beyond the nuclear model, such as kinship care, shared caregiving, or community involvement in parenting.
- Attention to language preferences and whether interpretation or translation was needed or offered.
- Awareness of how experiences of stigma or discrimination (e.g. related to sexuality, race, or disability) may affect the child's behaviour or trust in adults.
- Cautious interpretation of parenting or child behaviour that differs from Western norms, particularly around obedience, physical affection, or emotional independence.
- Notes on whether culturally relevant consultation or supports informed the assessment, particularly in complex or unfamiliar cultural contexts.

When a report is culturally aware, it does not lower the standard of safety or developmental care. Instead, it evaluates these factors in a way that is accurate, fair, and responsive to the child's lived environment.

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4. Tailoring the Approach: Age-Appropriate Assessment Methods

A child's capacity to provide reliable, independent input in family law contexts is closely linked to their developmental stage. Younger children, in particular, may have difficulty distinguishing their own preferences from those shaped by adult suggestion. Research indicates that children under the age of 10 are especially susceptible to influence, particularly when questioned by authority figures or when exposed to repeated or leading prompts. This does not mean their voices should be excluded, but rather that assessment must be carefully designed to support genuine expression.

Open-ended questioning, narrative prompts (i.e., inviting the child to tell a story or describe experiences in their own words), and observational methods allow for a developmentally sensitive understanding of the child's emotional world. Assessments should also account for the possibility a child may avoid certain topics or display inconsistent responses. Not due to dishonesty, but because of fear, confusion, or emotional overwhelm.

In psychological assessments for family law matters, the goal is not simply to document what a child says, but to understand how their developmental stage and environment may shape what they are able or willing to express. Techniques should be adapted to the child's age and capacity, ensuring opportunities to express preferences in ways that do not rely solely on verbal articulation.

What to look for:

- Use of age-appropriate and non-leading strategies to elicit the child's views
- Consideration of developmental vulnerability to suggestion, especially under age 10
- Clear explanation of how a child's verbal and nonverbal responses were interpreted
- Recognition that responses may reflect perceived expectations rather than authentic preferences

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5. Misreading Maturity: When “Grown-Up” Children Are Coping

Some children appear remarkably mature—articulate, self-contained, and seemingly unaffected by family conflict. While this can sometimes reflect advanced developmental capacity, in other cases it may signal adaptive overfunctioning. Children exposed to chronic stress or inconsistent caregiving may adopt adult-like behaviours to stabilise their environment, often at the cost of their own emotional development.

A psychologically informed report will seek to distinguish between developmentally typical maturity and coping-related overfunctioning. This includes exploring whether the child’s presentation reflects role confusion, suppressed emotional expression, or alignment with adult narratives. Maturity should not automatically be equated with resilience.

What a developmentally informed report might reflect:

- Clarifies whether the child’s apparent maturity is consistent with typical developmental expectations, or if it may reflect adaptive functioning in the context of stress or trauma.
- Explores any indicators of role reversal, such as the child managing adult responsibilities or providing emotional support to a parent.
- Attends to subtle cues that the child may be mirroring adult concerns, rather than expressing their own independent views.

Example:

A 12-year-old girl describes regularly managing the morning routine for her younger brother and intervening when he becomes distressed during changeovers. She also reports feeling anxious when her mother cries and tries to “cheer her up”. While these behaviours may suggest maturity, a developmentally informed report would question whether this child is carrying a disproportionate emotional load. The report might explore whether these patterns reflect a reversal of caregiving roles and assess how they may impact the child’s capacity to engage in age-appropriate developmental tasks.

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Implications for Legal Professionals

When reviewing psychological assessments, legal professionals may find it helpful to consider whether the report:

- Contextualises the child's behaviour and functioning within their developmental stage, rather than relying solely on chronological age or expected milestones.
- Demonstrates cultural awareness, including how identity, family roles, communication styles, and broader cultural norms may shape both parenting practices and the child's behaviour.
- Accounts for the child's developmental ability to form and express meaningful preferences, especially in relation to how those views were elicited and under what circumstances.
- Supports genuine expression by describing the methods used to elicit the child's views (e.g., whether open-ended prompts or age-appropriate techniques were used instead of direct or binary questioning).
- ^B • Interprets apparent maturity with caution, distinguishing between healthy independence and possible emotional burden or role confusion.

A high-quality report helps the Court avoid simplistic assumptions and instead supports nuanced, child-centred decision-making-grounded in both developmental science and cultural understanding.