# Children’s Court Family Division (FVIO and PSIO) child capacity checklist

Child’s name:

Date of birth:

| Criteria | How criterion was met |
| --- | --- |
| Are they able to focus on what you are saying? | (details) |
| Are they able to understand your role? (repeated back in their own words) | (details) |
| Do they understand the role of any police or social workers in the case? (also repeated back in their own words) | (details) |
| Do they understand the role of the court and the impact of court decisions? (how much explanation was required/what did they say?) | (details) |
| Do they demonstrate an understanding of why they are in court? What is their level of understanding of:   * their role as AFM/AP or Respondent * what ‘[family violence](#_Meaning_of_family)’ or ‘[prohibited behaviour](#_Section_5_Meaning)’ is | (details) |
| For either an AFM/AP or respondent, do they:   * understand what the applicant wants? (spontaneously or after explanation? Using their own words?) * understand what their parent/s or any others involved in the case want? * understand that they do not have to agree with what others want? | (details) |
| Do they understand the possible consequences of the court proceedings?   * The impact of conditions * The criminal consequences of breach (especially if they are the respondent) | (details) |
| If AFM – re family relationships:   * do they understand what might happen if they **do** or **do not** let the court know what they think? | (details) |

## Definitions

### Legal representation

In [Children Youth and Families 2005 – s. 524](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/vic/consol_act/cyafa2005252/s524.html):

(1B) The court may determine that a child aged 10 years or more is not mature enough to give instructions to a legal practitioner, considering—

1. the child's ability to form and communicate the child's own views; and
2. the child's ability to give instructions in relation to the primary issues in dispute; and
3. any other matter the Court considers relevant.

### Meaning of family violence

In [Family Violence Protection 2008 – s. 5](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/vic/consol_act/fvpa2008283/s5.html) (and refer to the section for ‘examples’):

* 1. For the purposes of this Act, **family violence**is—

1. behaviour by a person towards a family member of that person if that behaviour—
   * 1. is physically or sexually abusive; or
     2. is emotionally or psychologically abusive; or
     3. is economically abusive; or
     4. is threatening; or
     5. is coercive; or
     6. in any other way controls or dominates the family member and causes that family member to feel fear for the safety or wellbeing of that family member or another person; or
2. behaviour by a person that causes a child to hear or witness, or otherwise be exposed to the effects of, behaviour referred to in paragraph (a).

### Section 5 Meaning of prohibited behaviour

In [Personal Safety Intervention Orders Act 2010](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/vic/consol_act/psioa2010409/s5.html):

For the purposes of this Act, prohibited behaviour is—

1. assault; or
2. sexual assault; or
3. harassment; or
4. property damage or interference; or
5. making a serious threat.

### Section 7 Meaning of harassment

In [Personal Safety Intervention Orders Act 2010](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/vic/consol_act/psioa2010409/s5.html) (and refer to the section for ‘examples’):

For the purposes of this Act, ‘harassment’ means a course of conduct by a person towards another person that is demeaning, derogatory or intimidating and includes such conduct that is carried on by or through a third person.