

Serious and Persistent Conflict and Alternative Parenting Plans

Fact sheet

What is a Serious or Persistent Conflict?

A serious or persistent conflict is a disagreement or a series of disagreements between a parent and their (usually older) child or young person that places the safety, welfare and wellbeing of the child or young person in jeopardy.

Serious or persistent conflicts also include circumstances where a parent cannot provide adequate supervision for their (usually older) child or young person to such an extent that the safety, welfare and wellbeing of the child or young person is in jeopardy. Examples of serious or persistent conflicts might include:

- arguments between a parent and a child or young person that grow into physical abuse of the parent by the young person
- a child or young person sneaking out of the house most nights and coming home drunk or high
- a child or young person refusing to stop hanging out with dangerous people

I believe that I have a serious or persistent conflict with my child – what should I do?

The first option available for parents and young people in this situation is to ring the Department of Community Services (DoCS) Helpline on 132111 or the DoCS Parentline on 132055 and request assistance.

When DoCS receives a request for assistance in a serious or persistent conflict matter, DoCS MAY itself provide you with advice or assistance or DoCS COULD refer you to another agency for this. This advice/assistance is to help you to sort out the conflict without going to Court, and/or get access to appropriate support services

If the advice or assistance helps you to reach an agreement with your child that involves your child living somewhere else or someone else having parental responsibility for your child, an Alternative Parenting Plan can be written up. This Plan can then be registered in the Children's Court and will have the same effect as if it were an Order of the Court.

What is a Serious or Persistent Conflict?

I believe that I have a serious or persistent conflict with my child – what should I do?

What if the conflict between me and my child is so serious that we can no longer live together?

I've tried to resolve the conflict and nothing has helped – now what?

What is an Alternative Parenting Plan?

What is an Application for an Order approving an Alternative Parenting Plan and how do I make one?



Serious or Persistent Conflicts

If DoCS believes that the conflict between you and your child is so serious that advice or assistance will not help and that your child is in need of care and protection, DoCS MAY make an application to the Children's Court for a Care Order (See the brochure "Care Applications" for more information.).

What if the conflict between me and my child is so serious that we can no longer live together?

The first option available for parents and young people in this situation is to ring the DoCS Helpline on 132111 and request that DoCS help you resolve the conflict.

When DoCS receives a request to resolve a conflict that is so serious that a parent or child no longer wants to live together, DoCS MUST try to resolve the conflict. DoCS will do this by using the form of dispute resolution that DoCS considers most appropriate for your family.

If the dispute resolution offered helps you and your child to reach an agreement that involves your child living somewhere else or someone else having parental responsibility for your child, an Alternative Parenting Plan can be written up. This Plan can then be registered in the Children's Court and will have the same effect as if it were an Order of the Court.

I've tried to resolve the conflict and nothing has helped – now what?

If the services offered by DoCS have not helped you sort out the conflict with your child, or if you requested help but DoCS did not provide it or arrange for another agency to provide it, or if you do not want to go to DoCS for help, then a Court can be asked to make a decision about where your child should live and who should have parental responsibility for your child. This might happen by:

- You or your child making an application to the Children's Court for an Order approving an Alternative Parenting Plan
- DoCS making an application to the Children's Court for an Order approving an Alternative Parenting Plan
- DoCS making an application to the Children's Court for a Care Order (See the brochure "Care Applications" for more information.).

What is an Alternative Parenting Plan?

An Alternative Parenting Plan is a written document that sets out the way in which your child's needs will be met if there is a breakdown of your relationship with your child.

It might include: where your child should live; what contact you and other family members should have with your child; and what services should be provided to your child and your family to help sort out the problems.

The Alternative Parenting Plan must be written by DoCS, if DoCS is involved in any court proceedings to have the Alternative Parenting Plan approved by the Children's Court. If DoCS is not involved in the court proceedings, then anyone (including you or your child) can write the Alternative Parenting Plan.

A form for an Alternative Parenting Plan can be obtained from DoCS or from the Children's Court.

What is an Application for an Order approving an Alternative Parenting Plan and how do I make one?

If you have not been able to resolve the conflict with your child and, as a result, you believe that it is no longer possible for your child to remain living with you, you can make an application to the Children's Court for an Order approving an Alternative Parenting Plan. This is a way of asking the Court to give

parental responsibility for your child (or only some parts of your parental responsibility for your child) to someone else. You can also ask the Court to order that support services be provided to you and your child.

You must make this application on Form 1 – Application to the Children's Court. This form can be obtained from the Children's Court.

In both the section headed "Types of Orders Sought" and the section headed "Final Orders Sought" you should write "Order approving Alternative Parenting Plan".

You must attach to your Application a proposed Alternative Parenting Plan. This can be an Alternative Parenting Plan that has been written by you or someone else, so long as it includes all the changes to your parental responsibility for your child (such as where your child will live) and any support services that YOU want. Your Alternative Parenting Plan does not have to be agreed to by DoCS or your child.

The Children's Court Magistrate will make any orders that s/he thinks are appropriate to give effect to a proposed Alternative Parenting Plan if the Magistrate believes that:

- both you and your child have been advised that it would be good to have some legal advice about any proposed changes to the



parental responsibility for your child (so it is a good idea to get some legal advice about the proposed Plan before you make the Application to the Court); and

- dispute resolution either has not worked or would not work (so it is a good idea to see if DoCS-initiated dispute resolution can help before you make the Application to the Court).

Before making any orders, the Children's Court Magistrate must also consider the:

- child's wishes
- child's age and maturity
- child's capacity to live independently, and
- practical and emotional supports are available to your child.

By registering an Alternative Parenting Plan in the Children's Court or by making an Application to the Children's Court for an Order Approving an Alternative Parenting Plan you could be changing your parental responsibility for your child. Only you can decide whether you should do this. To help you decide, you might want to get advice from a lawyer. Also, for an Order Approving an Alternative Parenting Plan to be made

you will have to convince the Court that you and your child have been advised to get independent legal advice.

Places where you might be able to get independent legal advice include:

- Any private solicitor (you may have to pay a fee for this)
- The Legal Aid Commission of NSW
- Community Legal Centres
- Aboriginal Legal Centres