

Serious and Persistent Conflict and Alternative Parenting Plans

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What is a Serious or Persistent Conflict?

A serious and 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 are in jeopardy. Examples of serious and 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 undesirable 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 Community Services Helpline on 132 111 or Parentline on 1300 1300 52 to request assistance.

When Community Services receives a request for assistance where there is serious or persistent conflict, Community Services may provide you with advice or assistance or could refer you to another agency. The advice or assistance is to help you sort out the conflict without going to Court.

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 prepared. This Plan can be registered in the Children's Court and will have the same effect as if it were an Order of the Court.

If Community Services 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, Community Services may make an application to the Children's Court for a Care Order (see the Fact Sheet 'Care Applications' for more information).

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

The first option available for parents in this situation is to ring the Community Services Helpline on 132 111 and request that Community Services help you resolve the conflict.

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

If this 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 prepared. 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 Community Services have not helped sort out the conflict with your child or if you requested help but Community Services did not provide it or arrange for another agency to provide it, or if you do not want to go to Community Services 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;
- Community Services making an application to the Children's Court for an Order approving an Alternative Parenting Plan;
- Community Services making an application to the Children's Court for a Care Order (see the Fact Sheet 'Care Applications' for more information).

What is an Alternative Parenting Plan?

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

It may 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.

If Community Services is involved in Court proceedings to have an Alternative Parenting Plan approved by the Children's Court, Community Services must write the Alternative Parenting Plan. If Community Services is not involved in the Court proceedings, then anyone (including you and your child) can write the Alternative Parenting Plan.

A form for an Alternative Parenting Plan can be obtained from Community Services 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 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 parental responsibility) 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 a Form 4 – 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. It should include information such as where your child will live, any changes to parental responsibility for your child and any support services that you want. Your Alternative Parenting Plan does not have to be agreed to by Community Services or your child.

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When considering the Application, the Children's Court Magistrate can make any orders that may be required to give effect to the Alternative Parenting Plan, provided the Magistrate is satisfied that:

- Both you and your child have been advised that it would be a good idea 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
- That dispute resolution either has not worked or would not work (so it is a good idea to see if Community Services initiated dispute resolution can help before you make an 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 that are available to you and your child.

PLEASE READ CAREFULLY

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 may want to get advice from a lawyer. 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 may 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

Make sure that the person you get advice from knows about and understands the *Children and Young Persons (Care and Protection) Act 1998*.