

1 Executive summary

1.1 Children in care and their care planning

For the majority of Western Australian children, their parents and family network provide for their protection and care. However, at the commencement of this investigation there were 3356 children in the care of the Chief Executive Officer (**CEO**) of the Department for Child Protection (**DCP**).¹ For these children (referred to as 'children in care'), the State provides protection and care. The way in which the State is to perform this role is set out in the *Children and Community Services Act 2004* (**CCS Act**), the objects of which include 'to provide for the protection and care of children in circumstances where their parents have not given, or are unlikely to give that protection and care...' (s.6(d)).

As part of providing for the protection and care of children in care, the CCS Act contains a number of provisions requiring care planning for children in care. These include requirements for the preparation, timing, content and review of care plans, as well as provisions specific to participation by the child, their family and carers in care planning, and to Aboriginal and Torres Strait Islander children in care.

There are also further instruments that have the effect of regulating the administration of care planning responsibilities in Western Australia, in particular the policies and procedures established by DCP.

Cooperation between DCP, the Department of Health and the Department of Education is a critical aspect of the care planning system and is promoted by the CCS Act. This cooperation is consistent with the recommendations of the Review of the Department for Community Development (undertaken by Ms Prudence Ford, and subsequently known as the **Ford Review**), which were endorsed by the (then) Western Australian Government in 2007. Recommendation 63, in particular, recommended that 'the Departments of Health and Education and Training (now the Department of Education and the Department of Training and Workforce Development) respectively be required to develop a Health Plan (covering physical, mental and dental health) and an Educational Plan respectively for each child or young person in care.'

¹ Section 30 of the *Children and Community Services Act 2004* identifies that a child is in the CEO's care if the child is in one of the following five circumstances: the child is in provisional protection and care (s.29); the child is the subject of a protection order (time-limited) (s.54); the child is the subject of a protection order (until 18) (s.57); the child is the subject of a negotiated placement agreement (s.75(1)); or the child is provided with placement services under section 32(1)(a).

1.2 About the investigation

1.2.1 Rationale

The Western Australian Ombudsman has four core functions:

- To investigate and resolve complaints about public administration;
- To improve the standard of public administration over time;
- To review certain child deaths; and
- To undertake certain inspectorate functions as specified in legislation, and other specialist investigations.

Through the undertaking of reviews of child deaths, the Ombudsman identified a need to undertake further investigation of care planning for children in care.

1.2.2 Objective

The objective of the investigation was to examine how State Government agencies have administered the requirements of the CCS Act regarding care planning for children in care, in particular whether:

- DCP has established policies and procedures for care planning that are consistent with the requirements of the CCS Act;
- DCP is appropriately complying with the requirements for the preparation, timing and review of provisional care plans and care plans, set out in the CCS Act and its own policies and procedures;
- Care plans address the areas that the CCS Act and DCP's policies and procedures identify as necessary to ensure a child's wellbeing; and
- Health care planning and education planning are undertaken in accordance with the agreements that DCP has established with the Department of Health and the Department of Education, and in accordance with the related policies and procedures of the three agencies.

The investigation examined the administration of care planning for those children in care who were of primary school age at the commencement of the investigation, had been taken into care after 1 July 2008, and were still in care when the investigation commenced. This cohort numbered 443 children in total. This age of child and time period cohort was chosen because:

- Primary school aged children (those between six and 13 years of age) can be assumed to have certain core health and education needs enabling an examination of interagency cooperation;

- It was reasonable to consider agencies' performance against the requirements for care planning set out in the CCS Act, which was proclaimed in 2006, and the recommendations of the Ford Review, finalised in 2007, for children taken into care after 1 July 2008; and
- It yielded a cohort that was conducive to a cost effective investigation with a timely outcome.

1.3 Key messages

- In the five years since the proclamation of the CCS Act, the three State Government agencies that are primarily responsible for planning for children in care have cooperated to operationalise the requirements of the CCS Act. This work has resulted in the agencies redesigning the system for care planning, as follows:
 - DCP has developed a series of policies and procedures for care planning that are consistent with the CCS Act;
 - DCP and the Department of Health have agreed and developed a comprehensive strategy for health care planning that addresses the Ford Review recommendations regarding health care planning for children in care; and
 - DCP and the Department of Education have taken initial steps to address the Ford Review recommendations regarding education planning for children in care.
- DCP had prepared provisional care plans and/or care plans for nearly all children included in the investigation, as required by the CCS Act, however:
 - In most instances examined, DCP did not achieve the timeframes for care planning, as required by the CCS Act and its own policies and procedures, although timeliness varied widely across DCP districts; and
 - In many instances examined, DCP had not conducted reviews of care plans, as required by the CCS Act.
- Many of the children in care included in the investigation had not received appropriate health care and education planning. More particularly:
 - Although DCP and the Department of Health have commenced a comprehensive strategy for health care planning, only one third of children included in the investigation had received health assessments and/or medical examinations, as agreed in the strategy; and
 - Although DCP and the Department of Education have taken initial steps to establish a strategy for education planning, they have not yet implemented the education component of care planning and therefore few *Documented Education Plans* had been prepared for children included in the investigation.

- Many care plans did not record or otherwise demonstrate that the children in care included in the investigation were given the opportunity to express their wishes and views about their own care planning, as required by the CCS Act.
- Only half of the care plans we examined in detail covered all of the areas of child wellbeing identified in the CCS Act and DCP's policies and procedures.

1.4 Observations of the investigation

1.4.1 DCP, the Department of Health and the Department of Education have cooperated to redesign the care planning system for children in care

DCP has developed a series of care planning policies and procedures which operationalise all the requirements of the CCS Act

Since the proclamation of the CCS Act in 2006, DCP has developed and continued to refine a series of policies and procedures that describe how each of the requirements of the legislation should be implemented by its staff, as follows:

- The *Children and Young People in the CEO's Care Policy* came into effect in June 2007, to be superseded by DCP's *Care Planning Policy*, which came into effect in June 2009; and
- DCP's *Care Planning Policy* identifies that guidelines based on this policy are provided in DCP's *Casework Practice Manual (the Manual)*, which was also developed in 2009, and has been updated on an ongoing basis. For care planning, the Manual sets out the legislative authority, relevant standards, practice requirements and procedures for putting these into operation.

DCP has established a number of corporate governance arrangements for care planning. However, these have not included regular reporting to the agency's corporate executive on district performance in provisional care plan and care plan preparation and timeliness.

DCP and the Department of Health have agreed and developed a comprehensive strategy for the health component of care planning

In 2008, DCP and the Department of Health agreed a process for identifying the health needs of children in care and including them in care plans. This process was piloted during 2009, the pilot evaluated, and rollout of the process across Western Australia commenced in June 2010. DCP and the Department of Health have advised that the rollout was fully implemented on 16 May 2011. In July 2010, both agencies signed a Memorandum of Understanding (**Health MOU**) regarding the state-wide implementation of the agreed process. It included agreed monitoring and reporting processes. The mechanism at the operational level by which DCP and the Department of Health can identify and promptly follow up on health assessments that have not been undertaken was not yet operational in six of 17 districts at the beginning of the investigation, however during the investigation, DCP advised that all 17 districts now have this mechanism established.

To date, the Department of Health has not reported on health care planning for children in care in its annual report, as recommended by the Ford Review (recommendation 65). However, the Health MOU indicates that, in response to the Ford Review recommendation, the agencies have agreed that DCP will report on the progress of this strategy in its annual report, on behalf of both agencies.

DCP and the Department of Education have taken initial steps to establish the education component of care planning

At the commencement of the investigation, DCP and the Department of Education had taken initial steps to address the education component of care planning for children in care. On 13 July 2009, the Director General of the Department of Education and Training (now the Department of Education) and the Chief Executive Officer of DCP signed a *Memorandum of Understanding for Education Access and Support for Children in Care (Education MOU)*. A summary of the Education MOU was subsequently emailed by the Department of Education to all Directors of Schools, Principals, Deputy Principals and Student Services staff. These school responsibilities were reinforced in the Department of Education's *Guidelines for Implementing Documented Plans in Public Schools (the Guidelines)*.

At the commencement of this investigation, the Department of Education was not centrally monitoring the implementation by schools of the Education MOU or the Guidelines. To date, the Department of Education has not reported on children in care and their education planning in its annual report, as recommended by the Ford Review (recommendation 65).

Subsequent to this investigation commencing, the Department of Education has made plans to reiterate to schools the need to develop *Documented Education Plans* and provided information on how to do so. It also plans to monitor the preparation of *Documented Education Plans* across schools. This will provide the basis for reporting, including in its annual report, and follow up action if necessary.

1.4.2 Provisional care plans or care plans have been prepared for nearly all of the 443 children in care included in the investigation, however, other key components of the care planning system have not been fully implemented

DCP has prepared a provisional care plan and/or a care plan for nearly all children included in the investigation, as required by the CCS Act

The CCS Act requires the Chief Executive Officer of DCP to prepare provisional care plans and care plans for children in care. Provisional care plans and care plans are written plans that identify the needs of the child, outline steps and measures to address these needs and set out decisions about the care of the child. These requirements differ depending on the circumstances under which the child is taken into care.

- At the commencement of the investigation, 443 primary school aged children who were taken into care after 1 July 2008 were recorded by DCP as being children in the care of the Chief Executive Officer of DCP. The number of these children who required provisional care plans and care plans is summarised below.

Number of primary school aged children who were taken into care after 1 July 2008	Number of children in the cohort for whom a provisional care plan was required	Number of children in the cohort for whom a care plan was required
443	440 ²	282

We examined the implementation of the legislative requirements for the preparation of provisional care plans and care plans, as follows:

- We observed that a provisional care plan and/or a care plan had been prepared for 420 (95 per cent) of the 443 children in our cohort; and
- We observed that a provisional care plan had been prepared for 407 (93 per cent) of the 440 children in our cohort for whom a provisional care plan should have been prepared and that a care plan had been prepared for 222 (79 per cent) of the 282 children for whom a care plan should have been prepared.

DCP were notified during the investigation of the five per cent of children in care for whom a provisional care plan or care plan had not been prepared, and has advised that this has been rectified, where the child is still in care.

DCP and the Department of Health have commenced an agreed comprehensive strategy for health care planning and some progress has been made

We also examined the implementation of the Health MOU. As part of doing so, we examined the DCP files for the children in our cohort to identify whether there was evidence that the child had undergone either a health assessment by a community health nurse and/or a medical examination by a general practitioner. We examined this aspect of care planning for the 293 children in our cohort who had been taken into care through a protection order (time-limited), a protection order (until 18) or a negotiated placement agreement. For these children, the full care planning process, beyond the development of a provisional care plan, should have been evident.

We observed that, for 103 (35 per cent) of these 293 children, the DCP file recorded that they had undergone a health assessment and/or a medical examination. Districts included in the 2009 pilot study for health care planning achieved this outcome more often.

DCP and the Department of Education have taken initial steps to establish a strategy for education care planning, but have not yet implemented the education component of care planning

We also examined the implementation of the Education MOU. We examined the DCP files for the same 293 children discussed above to identify whether there was evidence that the school had prepared a *Documented Education Plan* and returned this to DCP to form the education dimension of the child's care plan. For 63 (22 per cent) of the 293 children, we observed a *Documented Education Plan* on the child's DCP file.

² Three of the 443 children in care were taken into care under a negotiated placement agreement and did not require a provisional care plan.

In many instances examined, DCP had not conducted reviews of care plans, as required by the CCS Act

The CCS Act provides that the 'CEO must carry out an investigation of the operation and effectiveness of every care plan at regular intervals not exceeding 12 months' (s.90(1)).

For 75 of the 293 primary school aged children in our cohort who were taken into care under a protection order or negotiated placement agreement, a care plan had been approved more than 12 months before the commencement of this investigation, and a review was therefore due. We observed that review of care plan documents had been completed for 28 of these 75 children (37 per cent). For a further 20 children (27 per cent), a new care plan had been prepared within the last 12 month period. For the remaining 27 children (36 per cent), we could not identify a review of care plan document or a new care plan that had been prepared within the last 12 months.

In most instances examined, DCP did not achieve the timeframes for care planning, as required by the CCS Act and identified in its own policies and procedures, although timeliness varied widely across DCP districts

The CCS Act requires that the Chief Executive Officer of DCP must prepare and implement a provisional care plan for a child taken into provisional protection and care within 7 working days after the child is taken into this type of care. Of our cohort of 443 children in care, a provisional care plan should have been prepared for 440 children. We observed that provisional care plans were completed within the 7 working day timeframe for 108 (25 per cent) of these 440 children.

The CCS Act requires that 'as soon as practicable after a child first comes into the CEO's care the CEO must prepare and implement a care plan for the child' (s.89(2)). DCP has determined that, as a matter of policy, care plans should be prepared and implemented within 20 working days of the child entering the care of the CEO (excluding children in provisional protection and care).

Of our cohort of 443 children in care, a care plan should have been prepared for 282 children. We observed that care plans were prepared within the 20 working day timeframe for 26 (9 per cent) of these 282 children.

Timeliness in the preparation of both provisional care plans and care plans varied markedly across DCP districts, with some districts achieving significantly higher levels of compliance with these timeframes than the average level of compliance for all districts. Districts that are successfully achieving the established timeframes offer potential models for other districts.

1.4.3 Many care plans did not record or otherwise demonstrate that children in care included in the investigation were given the opportunity to express their wishes and views about their own care planning, as required by the CCS Act

The CCS Act requires that children be given the opportunity to express their wishes and views freely, according to their abilities, to ensure that they are able to participate in decisions about their own care plan (s.10).

DCP has established policies and procedures which aim to ensure that children are given the opportunity to participate in the preparation of their own care plans. To assist Field Workers fulfil the requirements of the CCS Act and to assist them achieve the standard of practice established through policy, DCP has provided them with opportunities to attend internal and external training to increase their skills in working with children, and tools for Field Workers to use when assisting children of different ages and abilities to express their wishes and views.

However, there are gaps between DCP's policy and its practice regarding the participation of children in the preparation of their own care plans. We examined in detail the care planning documentation for 61 children from four DCP districts. Fifty of these children had care plans. Our examination of these 50 care plans found evidence that the child had participated in the care planning process in 20 (40 per cent) of these cases. DCP's own monitoring of care planning found that most children could not recall an opportunity to be involved in their care plan and that this was not always due to age or the developmental level of the child.

The CCS Act requires that parents and carers have opportunities and assistance to participate in decision-making processes that are likely to have a significant impact on the child's life (s.9(j)). DCP has also established policies and procedures which aim to ensure that parents and carers participate in care planning. For the 50 children whose care plans we examined in detail, 43 care plans (86 per cent) documented that at least one parent or step-parent was included in the care planning process, with carers being involved in 46 care plans (92 per cent).

1.4.4 Half of the care plans we examined in detail covered all the dimensions of child wellbeing identified in DCP's policies and procedures

The CCS Act provides that 'care plan means a written care plan that identifies the needs of the child; and outlines steps or measures to be taken in order to address those needs; and sets out decisions about the care of the child...' (s.89(1)). DCP has developed policies and procedures for the content of care plans, including a care plan template that contains eight dimensions of child wellbeing to be addressed in a care plan. These dimensions are safety; care arrangements; health; education; social and family relationships; recreation and leisure; emotional and behavioural development; and identity and culture.

Our examination of care planning documentation observed that, for the 50 children whose care plans we examined in detail:

- In 26 care plans (52 per cent) we reviewed, the needs of the child were identified in all eight dimensions of child wellbeing in the care plan template; and
- Analysing each of the eight dimensions individually, the needs of the child were identified between 96 per cent and 74 per cent of the time. The dimensions of health, education, emotional and behavioural development, and identity and culture were addressed the least number of times.

DCP's *Care Planning Policy* states that 'In addition to the legislative requirements, the care plan should also include ... a proposal to meet identity and cultural requirements.' We observed that 34 (68 per cent) of the 50 care plans we examined in detail identified needs

and included decisions and steps to address these needs for the identity and culture dimension. This rate was slightly higher, at 75 per cent, for Aboriginal and Torres Strait Islander children and children from culturally and linguistically diverse backgrounds.

DCP's *Care Planning Policy* also states that Aboriginal and Torres Strait Islander children and children from culturally and linguistically diverse backgrounds 'need to have well researched cultural plans as part of their care plans.'³ Our observations were consistent with DCP's own review of cultural plans, which in general found there to be inconsistent practice in developing cultural plans.

1.5 Recommendations and monitoring

1.5.1 Recommendations

The care planning system for children in care

Recommendation 1: Given the observations of the investigation, and particularly the observed instances of non-compliance with legislative requirements, DCP review, develop and implement improvements to its corporate governance mechanisms for care planning, including planned reporting within and external to DCP.

Recommendation 2: DCP and the Department of Health ensure that they proceed with their agreement to report on the progress of their strategy for health care planning for children in care through DCP's annual report, as set out in the Health MOU agreed by both agencies.

Recommendation 3: DCP and the Department of Health collaborate in performance monitoring and evaluation of health care planning for children in care so as to monitor the gap between the health status of children in care and those not in care.

Recommendation 4: The Department of Education ensure that it proceeds with the commitments made during the investigation to reiterate to schools the need to develop *Documented Education Plans*, to monitor the preparation of these plans across schools as part of the education component of the care planning system, and to report on children in care and their education planning in a way that is consistent with the Ford Review recommendations.

Implementing the key care planning components

Recommendation 5: DCP ensure that provisional care plans and care plans are prepared for all children in care, as required by the CCS Act.

³ Department for Child Protection, *Care Planning Policy*.

<<http://www.dcp.wa.gov.au/Resources/Documents/Policies%20and%20Frameworks/Care%20Planning%20Policy%202009.pdf>>. Accessed 25 May 2011

Recommendation 6: DCP and the Department of Health collaborate to ensure that the agreed processes set out in the Health MOU are implemented by the agency nominated as responsible in the Health MOU, so that every child in care ultimately:

- Receives a medical examination and health assessment, as set out in the Health MOU, within the agreed timeframes; and
- Is enrolled in the School Dental Service.

Recommendation 7: DCP ensure that a *Strengths and Difficulties Questionnaire*, focussing on mental health, is completed and analysed for every child in care (four years or older), as set out in the Health MOU and their own policies and procedures.

Recommendation 8: DCP and the Department of Health collaborate to ensure that referrals for health checks are followed up to ensure that they are fulfilled. Specifically:

- DCP revise their procedures for identifying when children in care have not received health checks for their physical and dental health to ensure that the child is referred for these checks, the results are returned to DCP and are incorporated into the child's care plan; and
- The Department of Health monitor the progress of referrals to ensure they are acted upon and the results returned to DCP.

Recommendation 9: DCP and the Department of Education ensure that *Documented Education Plans* are prepared by schools and are returned to DCP to form part of the child's care planning.

Recommendation 10: DCP ensure that reviews of every care plan are carried out at regular intervals not exceeding 12 months, as required by the CCS Act.

Timeliness of care planning

Recommendation 11: DCP ensure that provisional care plans are prepared within the 7 day timeframe required by the CCS Act.

Recommendation 12: DCP reconsider its approach to provisional care plan preparation, including its policies and procedures, so that it can achieve the 7 day timeframe and the content requirements for provisional care plans set out in the CCS Act.

Recommendation 13: DCP consider its approach to meeting the 'as soon as practicable' timeframe requirements for care plan preparation to meet the objectives and requirements of the CCS Act.

Recommendation 14: DCP ensure that care plans are prepared within the timeframe identified by its policies and procedures.

Recommendation 15: DCP identify approaches used in districts that have achieved higher timeframe compliance rates for the preparation of provisional care plans and care plans and assist other districts to adopt these approaches.

Participation in care planning

Recommendation 16: DCP ensure that children in care are given the opportunity to participate in decisions about their own care planning, as required by the CCS Act.

Recommendation 17: In ensuring that children in care participate in their own care planning, it is recommended that DCP:

- Revise its policies and procedures to specify the legislative requirements regarding children's participation in their own care planning and how they are to be met;
- Ensure Field Workers are able to implement these revised policies and procedures; and
- Monitor the introduction of its new tools for Field Workers to use to encourage child participation to determine whether they are proving to be effective.

Recommendation 18: DCP continue to ensure that parents and carers are involved effectively in care planning.

Content of care plans

Recommendation 19: DCP ensure that a child's care plan identifies the needs of the child, outlines steps or measures to be taken to address those needs and sets out decisions about the care of the child as required by the CCS Act.

Recommendation 20: DCP ensure that its own policies and procedures regarding the content of care plans are met.

Recommendation 21: DCP revise its current process for care plans to incorporate checks to ensure that each dimension of the care plan has been completed and that the dimensions indicate how the child's identified needs are to be addressed.

Recommendation 22: DCP revise its current approval process for care plans to incorporate checks to ensure that the results of a child's medical examination and/or health assessment have been incorporated into the relevant dimension of their care plan.

Recommendation 23: DCP revise its policies and procedures to specify clearly what constitutes a significant change in a child's circumstances and therefore warrants a modification to a child's care plan and ensure that the modification is undertaken in a way that is timely in the context of the need for the modification.

1.5.2 Monitoring the implementation and effectiveness of recommendations

Each of these recommendations will be monitored by the office of the Ombudsman to ensure their implementation and effectiveness in relation to the observations made in this investigation.