

De-identified and Redacted Final Report
Full investigation - *Ombudsman Act 1972*

Pseudonyms have been assigned to the relevant parties

Complainant	Ms Ellie Manifold
Department	Department for Child Protection
Ombudsman reference	2018/05669
Department reference	18DCSI/0696
Date complaint received	25 May 2018
Issues	<ol style="list-style-type: none">1. Whether the Department for Child Protection erred in its determination to transfer the complainant's former foster child into the care of another foster carer2. Whether the Department for Child Protection erred in formulating and/or managing the transfer of the complainant's former foster child into the care of another foster carer3. Whether the Department for Child Protection erred in its determination, following a placement transition, to deny the complainant further contact with her former foster child4. Whether the Department for Child Protection erred in omitting to communicate the outcomes of an internal review to the complainant in a timely manner

Jurisdiction

The complaint is within the jurisdiction of the Ombudsman under the *Ombudsman Act 1972*.

The complaint is a prescribed child protection complaint for the purposes of the Ombudsman Act and the *Health and Community Services Complaints Act 2004*.

The complaint concerns the determination of the Department for Child Protection (**the department**) to transfer care of the complainant's former foster child to another foster carer, as well as various actions of the department surrounding and following that determination.

Investigation

My investigation has involved:

- assessing the information provided by the complainant
- seeking more particulars from the complainant
- seeking a response from the department
- clarifying the response with the department
- reviewing the department's files concerning the complainant's former foster child
- considering:
 - the Ombudsman Act
 - the Health and Community Services Complaints Act
 - the *Children's Protection Act 1993*
 - the *Children and Young (People) Safety Act 2017*
 - the *Child Protection Regulations 2010*
 - the Charter of Health and Community Services Rights
 - the department publications: *Transition Planning Between Placements for Children in Care* and *Aboriginal Cultural Identity Support Tool*
- preparing a provisional report and seeking the views of the parties
- preparing this final report.

Standard of proof

The standard of proof I have applied in my investigation and report is on the balance of probabilities. However, in determining whether that standard has been met, in accordance with the High Court's decision in *Briginshaw v Briginshaw* (1938) 60 CLR 336, I have considered the nature of the assertions made and the consequences if they were to be upheld. That decision recognises that greater care is needed in considering the evidence in some cases.¹ It is best summed up in the decision as follows:

The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding, are considerations which must affect the answer to the question whether the issue has been proved ...²

Response to my provisional report

1. I provided my tentative views to the parties by way of my provisional report dated 8 October 2018.
2. Ms Manifold responded to my provisional report by way of email dated 15 October 2018.
3. Ms Manifold clarified certain factual matters and provided additional comment in respect of her interactions with the department and the foster care agency. I have considered this material and incorporated it into my report where appropriate.
4. Ms Manifold concluded:

I know nothing will change even though I hoped it to have a different outcome, I just wanted to defend myself further and hope that this situation never happens to another great carer but unfortunately, it is still happening.

¹ This decision was applied more recently in *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 110 ALR 449 at pp 449-450, per Mason CJ, Brennan, Deane and Gaudron JJ.

² *Briginshaw v Briginshaw* at pp 361-362, per Dixon J.

[...]

I am disappointed that it seems, in the beginning all parties (besides [XYZ]) stated contact [with me] would benefit [Henry] but it is obvious their decisions changed after [XYZ]'s reviews. If [the department] followed their word to me then I wouldn't have had to push so hard and fight so hard for what was right, I wouldn't have appeared angry and distressed over the situation and I wouldn't have had to contact you.

I believe [the department] and especially [XYZ] still have a lot to answer for and it is very upsetting that a child and his former carer have to suffer because of it. I have formed so many relationships with carers of previous children I have cared for and I have become an 'aunty' to all of these children. I hope I am wrong but do believe that this will surface as [Henry] grows up. So many foster children have reactive attachment disorder and this situation right here, is a perfect example of why.

5. The department responded to my provisional report by way of letter dated 2 November 2018.
6. The department submitted:

We have reviewed the Provisional Report in collaboration with the relevant directorate and the Lead Practitioner. The department acknowledges the views outlined in the report and accepts each of the five recommendations.

Upon receipt of the final report, the department will take immediate steps to implement these recommendations both as they relate to the particular case and indeed as they can support professional learning and improved practice guidance.
7. In light of the responses received from the parties, my views remain the same as those expressed in my provisional report.
8. I have made one minor amendment to the fourth recommendation, in accordance with submissions from the department.³
9. I have also clarified the first recommendation.

Background

Placement with Ms Manifold

10. At all relevant times Ms Manifold was registered as a foster carer with XYZ. XYZ is a service that provides emergency, short-term and long-term placements for children under the guardianship of the Minister for Child Protection (**the Minister**) pursuant to a service agreement executed by the former Minister for Education and Child Development.
11. [Redacted]. XYZ is not an agency to which the Ombudsman Act applies.
12. Henry Stone was born on [redacted]. Henry is reportedly of [redacted] Aboriginal cultural background.⁴
13. Henry was removed from the care of his biological mother shortly after birth.⁵ The department thereafter sought orders of the Youth Court for Henry's care and protection,

³ In this regard, the department observed that its Transition Planning Guidelines may soon be retired with the introduction of a new Manual of Practice.

⁴ I understand that Henry's precise cultural background is a matter of contention between the parties.

⁵ Case note dated [redacted].

culminating in an order that Henry be placed under guardianship of the Minister until the age of 18 years old.⁶

14. On [redacted] the department, following consultation with XYZ, placed Henry in the care of Ms Manifold and [redacted].
15. Ms Manifold is not of Aboriginal cultural background. Ms Manifold has, however, cared for many Aboriginal children in the past and claims a social connection to Henry's specific community.
16. Henry's placement with Ms Manifold was initially designated as an emergency short-term placement;⁷ however, in [redacted] Ms Manifold offered to care for Henry for a period of approximately six months while XYZ and the department attempted to source a culturally appropriate long-term placement for Henry.⁸
17. Henry's placement with Ms Manifold and [redacted] was further extended until 10 October 2017, and then until 11 November 2017 and then, finally, until 31 January 2018.⁹ Notwithstanding these extensions, the placement was at all material times designated as a short-term placement.
18. Between August 2017 and December 2017, the department and XYZ assessed a number of long-term placement options.¹⁰
19. According to Ms Manifold, Henry's bond with her and her family increased significantly during this period.¹¹

Transition to Ms Klein

20. On 29 November 2017 XYZ advised the department that it had identified a suitable long-term carer for Henry;¹² subsequently confirmed to be Ms Ruby Klein.
21. Ms Klein is of Aboriginal cultural background. The department's case notes do not disclose Ms Klein to be a member of Henry's specific community.
22. At this time, XYZ invited the social worker allocated to Henry's case to consult with XYZ in respect of an appropriate transition plan.¹³ The department's records do not disclose whether such consultation took place; nor do the records disclose whether the department indicated its approval for the proposed placement at this time.
23. It appears that XYZ separately notified Ms Manifold of the proposal.¹⁴ The department's case notes do not clarify this issue.
24. On 7 December 2017 a representative of XYZ emailed Ms Manifold in respect of the transition arrangements:

Hi [Ellie],

We have now put a transition plan in place for [Henry] and [Ruby Klein] was informed earlier today.

⁶ [Redacted].

⁷ [Redacted].

⁸ [Redacted].

⁹ Case notes dated 14 June 2017; 10 October 2017 and 13 November 2017.

¹⁰ See letter from Ms Manifold to Ms Cathy Taylor (undated); case notes dated 24 October 2017, 23 November 2017, 24 November 2017 and 4 December 2017.

¹¹ Letter from Ms Manifold to Ms Cathy Taylor (undated).

¹² Case note dated 29 November 2017.

¹³ Case note dated 29 November 2017.

¹⁴ Email from Ms Manifold to XYZ dated 7 December 2017 ('...I agreed approximately 3 weeks ago, before your holiday to have [Ruby] take my number to start visits, but I was never contacted').

I was waiting for [redacted] to talk to you but I'll let you know the plan.

The plan is

- meet and greet on [redacted] at the [XYZ] Christmas Party
- Monday the 18th December [Ruby] to visit with you at home
- Wednesday 20th December you can visit [Ruby]'s home or met [sic] somewhere mutual
- Friday [Henry] is transitioned to [Ruby]'s care
- Catch-up for Christmas or just after with [Henry] has been included in the plan

I'm sure [Ruby] will be a great carer and connection to his culture for [Henry].

[Henry] needs to be tranfered [sic] to a long term placement so he can get to know his new carer and I'm sure you will be helpful if [Ruby] needs to call you around sleep routines for [Henry].

[...]

Can you start to put some notes together for [Ruby] to have for handover around his health issues would be good [sic].

Thank you

25. Later that same day, Ms Manifold contacted XYZ to advise that she held concerns about the brevity and nature of the transition plan. In this email, Ms Manifold informed XYZ that, in her view, a six- to eight-week transition period would be more appropriate. Ms Manifold expressed that it was her desire to 'ensure a smooth transition for [Henry], free from any traumatic experiences'.¹⁵
26. Later that same day, XYZ responded to Ms Manifold to advise that it was not prepared to alter the transition plan. XYZ submitted that the transition plan had been developed based on prior discussions with Ms Manifold and [redacted], wherein Ms Manifold was alleged to have supported an expedited transition.¹⁶
27. On 8 December 2017 Ms Manifold contacted department social worker Ms Laura Bailey to express concerns about the transition plan. Ms Bailey informed Ms Manifold that the department had received a copy of the transition plan from XYZ the previous day and that she (Ms Bailey) did not support the plan as constituted. Ms Bailey suggested that Ms Manifold provide the department with an alternative proposal for further discussion with XYZ.¹⁷
28. It is Ms Manifold's recollection that, during this conversation, Ms Bailey asked her if she (Ms Manifold) would be prepared to become Henry's long-term carer. Ms Manifold submits that she expressed a willingness to consider the possibility.¹⁸
29. According to Ms Manifold:

I questioned whether I would be able to take [Henry] on holidays with me because I wouldn't want to have him in respite, where he would miss out on our family holidays and her reply was "yes, he would become like your son. If that's your main concern I will organise his passport right away."
30. This is not reflected in the department's case notes concerning the conversation.¹⁹

¹⁵ Email from Ms Manifold to XYZ dated 7 December 2017.

¹⁶ Email from XYZ to Ms Manifold dated 7 December 2017.

¹⁷ Case note dated 8 December 2017.

¹⁸ Letter from Ms Manifold to Ms Cathy Taylor (undated).

¹⁹ Case note dated 8 December 2017. Ms Manifold submits that during this discussion, Ms Bailey also undertook to contact XYZ to establish some ground rules in respect of the Christmas party 'meet and greet'. According to Ms Manifold, these rules were later not adhered to.

31. Later that same day, Ms Manifold emailed Ms Bailey to supply a proposed transition plan. Ms Manifold's plan allowed for a transition period of approximately four weeks, with more intensive contact between Ms Klein and Henry before the final handover date. In this email, Ms Manifold thanked Ms Bailey for her 'support in allowing [her] to be included'.²⁰
32. That same day, Ms Bailey contacted XYZ to request a meeting between XYZ, the department, Ms Manifold and Ms Klein. Ms Bailey advised XYZ that the department was of the view that the existing transition plan was too brief.²¹ A representative of XYZ subsequently contacted the department to express dissatisfaction with Ms Bailey's comments; observing that XYZ had attempted to coordinate the transition plan with the department in the first instance.²²
33. On [redacted] Ms Manifold attended the XYZ Christmas party for the arranged 'meet and greet' with Ms Klein.²³
34. On 11 December 2017 Ms Bailey telephoned Ms Manifold to discuss the access arrangements. It is Ms Manifold's recollection that, during this conversation, Ms Bailey expressed 'full support [for] [Henry] remaining with [Ms Manifold's] family long term'. Ms Manifold submits that Ms Bailey informed her that she (Ms Bailey) would send an email to XYZ 'notifying them of [Ms Manifold's] decision'.²⁴
35. The department's case notes present a different account of the discussion. Ms Manifold is said to have informed Ms Bailey that seeing Ms Klein at the Christmas party 'was lovely, but it was like I was watching her with my child'. According to the case notes, it was at this time that Ms Manifold expressed a desire to assume long-term care for Henry; stating that she intended to raise the matter with XYZ.²⁵
36. The case notes reflect that Ms Bailey advised Ms Manifold that, although she was supportive of Ms Manifold raising the proposal with XYZ, the department and XYZ would need to discuss the matter further before a decision could be made.²⁶
37. Later that same day, Ms Manifold emailed a representative of XYZ:

After countless thoughts and a long chat with [Laura Bailey], I have decided I would like [Henry] to remain in my care long term.

Meeting [Ruby] and seeing her with [Henry], put everything in perspective for me.

[...]

I know it's a terrible time to make that final decision but I hope yourself and [XYZ] understand and remain supportive.

[...]

I have been in talks with DCP who support my decision and look forward to hearing from you to discuss further.²⁷
38. Ms Manifold forwarded a copy of the above email to Ms Bailey that same day.²⁸

²⁰ Case note dated 8 December 2017 (2).

²¹ Case note dated 8 December 2017 (3).

²² Case note dated 11 December 2017.

²³ [Redacted]

²⁴ Letter from Ms Manifold to Ms Cathy Taylor (undated).

²⁵ Case note dated 11 December 2017 (2).

²⁶ Case note dated 11 December 2017 (2).

²⁷ Email from Ms Manifold to XYZ dated 11 December 2017.

²⁸ Case note dated 11 December 2017.

39. On 12 December 2017 XYZ responded to advise that it would 'take [Ms Manifold's] request on board'. XYZ informed Ms Manifold that it would first need to discuss Henry's cultural needs with the department's Principal Aboriginal Consultant (PAC).²⁹

40. Shortly afterwards, XYZ contacted Ms Bailey to advise of its recent discussions with Ms Manifold and to request a meeting with the PAC 'to discuss [Henry]'s long term placement and his cultural needs into the future'. XYZ observed:

As the planned long term carer for [Henry] is an Aboriginal woman with connections to culture and also works part-time for DECD as a School Aboriginal Education Officer we will need to discuss and evaluate this to [sic] our CEO.³⁰

41. Later that same day, Ms Bailey contacted XYZ to clarify the nature of the request for consultation with the PAC. In this email, Ms Bailey observed:

Whilst DCP would support [Henry] staying with [Ellie], given their ongoing established relationship, his attachment relationship with her, her recently voiced commitment to care for him long term and her registration as a [sic] [XYZ] carer, it is not DCP's intention to insist this occurs, if it means that [XYZ] would be breaching policies/procedures. Does [XYZ] believe that this option would not be in [Henry]'s best interest?³¹

42. Later that same day, the representative of XYZ responded to Ms Bailey:

We are following the guidelines of "The Aboriginal Child Placement Principle" and as [Ellie] is not a long term carer with [XYZ] and non-Aboriginal, we would only place a child long term with her if there was no other option, we have a long term Aboriginal carer waiting to care for [Henry] that [sic] would be the preferable option for [Henry] and his connection to culture for the future.³²

43. On 14 December 2017 Ms Bailey contacted XYZ to arrange a case consultation in respect of the competing long-term care options.³³

44. On 18 December 2017 Ms Bailey consulted with [redacted], PAC, in respect of the situation. [The PAC] advised Ms Bailey that, on consideration of the Aboriginal Child Placement Principle, she supported the proposal to place Henry in the long-term care of Ms Klein. At the same time, [the PAC] acknowledged Henry's relationship with Ms Manifold, suggesting that this be preserved 'via respite [care] etc.'³⁴

45. Ms Bailey subsequently communicated [the PAC's] advice to XYZ. Ms Bailey requested that the proposed case consultation proceed in order to discuss the necessary transition arrangements.³⁵

46. On 21 December 2017 representatives of XYZ and the department met to discuss the transition plan. XYZ notified the department that it held some concerns about Ms Manifold's behaviour during the initial 'meet and greet'.³⁶ XYZ advised the department that it would notify Ms Manifold that afternoon that XYZ did not support her assuming long-term care for Henry 'as per the Aboriginal Placement Principles [sic]'. The department was informed that XYZ had made some modifications to the transition plan in light of Ms Manifold's earlier criticisms.³⁷ XYZ also advised the department that it

²⁹ Email from XYZ to Ms Manifold dated 12 December 2017.

³⁰ Case note dated 12 December 2017. XYZ subsequently clarified that it is XYZ policy to notify the CEO in the event that an Aboriginal child is placed in the long-term care of a non-Aboriginal person; case note dated 12 December 2017.

³¹ Case note dated 12 December 2017.

³² Case note dated 12 December 2017.

³³ Case note dated 14 December 2017.

³⁴ Case note dated 18 December 2017.

³⁵ Case note dated 18 December 2017 (2).

³⁶ Case note dated 21 December 2017.

³⁷ Case note dated 21 December 2017.

considered there was a 'very real' possibility that Henry's brother could also be placed with Ms Klein.³⁸

47. That same day, XYZ contacted Ms Manifold to advise of the PAC's position. XYZ notified Ms Manifold that the final handover was to occur in [redacted]. XYZ subsequently emailed Ms Manifold a copy of the modified transition plan.³⁹
48. On 22 December 2017 Ms Manifold contacted the Office of the then-Minister for Education and Child Development to express her concerns about the proposed transition.⁴⁰ It appears that responsibility for responding to Ms Manifold's concerns was then delegated back to the department.⁴¹
49. On 27 December 2017 Ms Manifold made a formal complaint to the department's Complaints Unit.⁴² At this time, the department informed Ms Manifold that the decision to transition Henry into Ms Klein's care was supported by XYZ and the PAC.⁴³ The Complaints Unit subsequently determined that Ms Manifold's complaint was being addressed at the local and regional levels.⁴⁴
50. On 29 December 2017 the department's Acting Regional Director, Central Region, spoke with Ms Manifold about her complaint. Ms Manifold expressed her concern that the department was not supporting her in her discussions with XYZ.⁴⁵
51. On 2 January 2018 a 'transition meeting' involving Ms Manifold, XYZ and Ms Klein took place at Ms Manifold's home. [Redacted] attended this visit as Ms Manifold's support person.⁴⁶ According to Ms Manifold, during this visit Ms Klein volunteered that she would be prepared to care for another child so as not to harm Henry's attachment to Ms Manifold.⁴⁷ It does not appear that this statement was communicated to the department.
52. Later that same day, at the suggestion of [the support person], Ms Manifold contacted XYZ and the department to request that the next scheduled contact visit be postponed pending a requested 'care team meeting to discuss [Henry]'s long term plan further'.⁴⁸
53. On 3 January 2018 Ms Bailey discussed the situation with a representative of XYZ. Ms Bailey expressed concern that Ms Manifold appeared to be struggling emotionally with the placement decision. The department's case notes reflect that Ms Bailey reiterated that the transition was 'supported' by the department 'for the following identified reasons':
 - placement with [Ruby] will be aligned with the Aboriginal Placement Principals [sic].
 - placement with [Ruby] is supported by DCP PAC ([redacted]).
 - [Ruby] has a supportive extended family, who [XYZ] has advised live in close proximity to her and can provided respite etc.
 - placement with [Ruby] may provide the opportunity for [Henry]'s older sibling [redacted] to also move into her care.

³⁸ Case note dated 21 December 2017.

³⁹ Letter from Ms Manifold to Ms Cathy Taylor (undated).

⁴⁰ Email from Ms Manifold to the Hon Susan Close dated 22 December 2017.

⁴¹ Letter from Ms Fiona Ward to Ms Manifold dated 14 March 2018.

⁴² Case note dated 27 December 2017.

⁴³ Case note dated 27 December 2017.

⁴⁴ Complaints Unit Review Report (undated), completed on 7 May 2018.

⁴⁵ Case note dated 29 December 2017.

⁴⁶ Case note dated 2 January 2018.

⁴⁷ Letter from Ms Manifold to Ms Cathy Taylor (undated).

⁴⁸ Case note dated 2 January 2018.

- placement with [Ruby] will mean [Henry] will not needing [sic] to attend childcare in the future reducing his risk of further episodes of Broculitis [sic], which has required hospitalisation on several occasions [sic].
 - the impulsiveness of [Ellie]'s decision to commit to [Henry] long term.⁴⁹
54. That same day, a representative of the department's Complaints Unit contacted Ms Manifold to convey that the quality of Ms Manifold's care of Henry was not at issue. The Complaints Unit encouraged Ms Manifold to continue to work with the department's Acting Regional Director to resolve her concerns.⁵⁰
 55. That same day, Ms Manifold attended a care team meeting with [the support person], the Manager of XYZ's Metropolitan Family Based Care Team and the department's Acting Regional Director. Ms Manifold requested that the progression of the transition plan be postponed. This request was not supported by the department or XYZ.⁵¹ In a subsequent email exchange, XYZ informed Ms Manifold that a contact visit that had been scheduled for the following day was to proceed, subject to some modifications.⁵²
 56. That same day, Ms Manifold contacted the Office of the Guardian for Children and Young People (**the Office of the Guardian**) to express concern about the transition.⁵³
 57. A contact visit took place on 4 January 2018. Ms Manifold attended this visit with her sister. Ms Manifold subsequently lodged a complaint with the Chairperson of XYZ about the conduct of XYZ's representative during this meeting.⁵⁴
 58. That same day, the department sought the advice of a child psychologist in respect of the transition arrangements.⁵⁵ The child psychologist subsequently advised that she was prepared to provide the department with a revised transition plan that would seek to recognise and accommodate Ms Manifold's difficulties with the existing process.⁵⁶
 59. On 5 January 2018 the Office of the Guardian contacted the department to seek information about the transition. The Office of the Guardian recommended that the department consult with a child psychologist about the transition.⁵⁷ The department subsequently confirmed to the Office of the Guardian that this was underway.
 60. The Office of the Guardian subsequently contacted Ms Manifold to advise that it had been provided with a rationale for Henry's transition and would not be intervening in the matter.⁵⁸
 61. A further contact visit took place on 9 January 2018. XYZ subsequently advised the department that, during this visit, Ms Manifold became upset that the decision to transition Henry into the care of Ms Klein was not being reviewed. XYZ expressed further concerns about Ms Manifold's behaviour during the visit.⁵⁹ In her response to my provisional report, Ms Manifold disputed this characterisation of the contact visit. She emphasised that her distress was not witnessed by Henry or Ms Klein.
 62. That same day, a representative of XYZ supplied Ms Manifold with a modified transition plan that made certain adjustments in recognition of Henry's routine and Ms Klein's

⁴⁹ Case note dated 3 January 2018.

⁵⁰ Complaints Unit Review Report (undated), completed on 7 May 2018.

⁵¹ Complaints Unit Review Report (undated); letter from Ms Manifold to Ms Cathy Taylor (undated).

⁵² Case note dated 2 January 2018.

⁵³ Letter from Ms Manifold to Ms Cathy Taylor (undated).

⁵⁴ Letter from Ms Manifold to Ms Cathy Taylor (undated).

⁵⁵ Case note dated 4 January 2018. The department maintains a Psychological Services unit.

⁵⁶ Case note dated 12 January 2018.

⁵⁷ Case note dated 9 January 2018.

⁵⁸ Letter from Ms Manifold to Ms Cathy Taylor (undated).

⁵⁹ Email from XYZ to [the department] dated 10 January 2018.

stated availability. Ms Manifold subsequently expressed concerns about the nature and timing of certain of the scheduled visits.⁶⁰

63. On 10 January 2018 the department's child psychologist provided, *inter alia*, the following advice and recommendations to Ms Bailey:
- that support be provided to Ms Klein in respect of Henry's needs following the transition
 - that, 'if at all possible', Henry continue to share a relationship with Ms Manifold and [redacted] following the transition
 - that Ms Manifold be asked to provide a photograph of herself for Henry to retain following the transition
 - that the department seek Ms Manifold's cooperation in ensuring that future contact visits proceeded in a manner best-suited to demonstrating to Henry that Ms Klein was a safe person with whom Henry could establish a relationship
 - that the department seek Ms Manifold's views about the possibility of her having an ongoing involvement in Henry's life (i.e. following the transition to Ms Klein), and that the transition plan be further developed to reflect these views.⁶¹
64. The psychologist otherwise observed that a four- to six-week transition period was ordinarily recommended in such cases.⁶²
65. A further contact visit took place on 11 January 2018, at which time Henry was conveyed to Ms Klein's home. XYZ contacted the department following this visit to express its concern that Henry was 'feeling the vibes from [Ellie] being very upset and angry' about the situation. In her response to my provisional report, Ms Manifold referred to her difficulties in coordinating this visit with XYZ.
66. XYZ otherwise advised the department that Henry appeared to settle in to Ms Klein's home 'really well'.⁶³ Ms Manifold's recollection is that Henry appeared 'very clingy upon his return' from the visit and was unsettled during the night.⁶⁴
67. On 12 January 2018 Ms Bailey communicated the child psychologist's recommendations to XYZ. Ms Bailey requested that XYZ provide a response for the child psychologist's consideration.⁶⁵
68. That same day, XYZ informed the department that in its assessment the contact visits appeared to be worsening. XYZ expressed concern that Ms Manifold's relationship with XYZ and Ms Klein was becoming 'increasingly adversarial'. XYZ nevertheless indicated that it intended to respect the recommendations of the child psychologist.⁶⁶ It is Ms Manifold's perspective that she was not being adequately supported by XYZ at this time.
69. Later that same day, a representative of XYZ contacted the department to provide an update as to her discussions with Ms Manifold concerning the style of transition recommended by the child psychologist. The representative reported that Ms Manifold seemed adversarial to the proposal, concluding:

As the worker I feel this has past [sic] the point that [Ellie] is thinking about what is in [Henry]'s best interest and feel this is not in [Henry]'s best interest and child focused and

⁶⁰ Case note dated 10 January 2018.

⁶¹ Case note dated 10 January 2018 (2).

⁶² Case note dated 10 January 2018 (2).

⁶³ Email from XYZ dated 12 January 2018.

⁶⁴ Letter from Ms Manifold to Ms Cathy Taylor (undated).

⁶⁵ Case note dated 12 January 2018.

⁶⁶ Case note dated 12 January 2018.

can possibly be more damaging to his emotional needs considering [sic] [Ellie] [sic] level of anger and her emotional state.⁶⁷

70. A further contact visit took place on 13 January 2018. XYZ subsequently reported to the department that Henry appeared to go happily to Ms Klein's family and that, from XYZ's perspective, the visit proceeded smoothly.⁶⁸ According to Ms Manifold, Henry was again unsettled that night.⁶⁹
71. According to Ms Manifold, on 15 January 2018 an elder from Henry's community contacted XYZ to voice their support for Henry remaining in her care.⁷⁰ This information does not appear to have been communicated to the department.
72. Further contact visits took place on 15 and 17 January 2018. According to Ms Manifold, Henry was very unsettled following these visits. Ms Manifold states that she became concerned that Henry was becoming distressed and traumatised by the visits.⁷¹
73. On 16 January 2018 the department sought advice from the child psychologist in respect of XYZ's concerns about the contact visits. The child psychologist expressed empathy for Ms Manifold's position; however, did not recommend that the transition be postponed. The child psychologist recommended that XYZ seek a copy of Henry's routine from Ms Manifold's [redacted], and that, if possible, the department facilitate Ms Manifold's attendance at Ms Klein's home to reassure Henry about the transition.⁷²
74. The final handover took place on [redacted]. By all accounts it was a distressing affair.⁷³

Request for access

75. On 14 March 2018 Ms Fiona Ward, Deputy Chief Executive Officer of the department, wrote to Ms Manifold, ostensibly in response to Ms Manifold's earlier approach to the Minister:

I thank you for the care you have provided to [Henry], the department appreciated the commitment you have shown to him.

I acknowledge that you do not agree with the decision the department has made regarding [Henry]'s care. Important decisions like the one we have made for [Henry] are made in consideration of range [sic] of assessments, cultural advice and the best long term interests of the child.

I understand that [Henry] leaving your care has been a very difficult time for you. I would encourage you to seek support via [XYZ] [...] should you feel that this would be of benefit to you.⁷⁴

76. On 9 April 2018 XYZ notified the department that Ms Manifold's [redacted] had contacted XYZ to seek an update concerning Henry's circumstances and to request that Ms Manifold be permitted to see Henry.⁷⁵
77. On 13 April 2018 several of the department's senior practitioners conducted a case consultation in respect of the [redacted]'s request. It was resolved that the department

⁶⁷ Case note dated 12 January 2018.

⁶⁸ Email from XYZ to [the department] dated 17 January 2018.

⁶⁹ Letter from Ms Manifold to Ms Cathy Taylor (undated).

⁷⁰ Letter from Ms Manifold to Ms Cathy Taylor (undated).

⁷¹ Letter from Ms Manifold to Ms Cathy Taylor (undated).

⁷² Case note dated 16 January 2018. The department's records do not suggest that Ms Manifold was asked to participate in such a home visit; however, I note that XYZ had previously submitted to the department that, owing to the breakdown in the relationship between the parties, Ms Klein was reluctant to participate in such an arrangement. It does not appear that the child psychologist was made aware of Ms Klein's position; case note dated 10 January 2018.

⁷³ [Redacted]; letter from Ms Manifold to Ms Cathy Taylor (undated).

⁷⁴ Letter from Ms Fiona Ward to Ms Manifold dated 14 March 2018.

⁷⁵ Case note dated 10 April 2018.

- would seek the advice of a child psychologist and to undertake further consultation with XYZ in respect of the request.⁷⁶
78. On 16 April 2018 Ms Manifold wrote to the Minister to request a formal investigation into the merits and circumstances of Henry's transition and to request that the department return Henry to her care.⁷⁷ On 17 April 2018 the department's Complaints Unit commenced an internal review of the matter.⁷⁸
 79. On 23 April 2018 representatives of the department and XYZ met to discuss Ms Manifold's request to see Henry. XYZ advised the department that Ms Klein had expressed concerns about the request. The department was informed that Henry appeared content and settled with Ms Klein.⁷⁹
 80. On 24 April 2018 the department consulted with its Principal Social Worker (PSW) in respect of the request. The PSW advised that she was not supportive of the request. The PSW expressed the view that facilitating the request could risk destabilising Henry's placement with Ms Klein.⁸⁰
 81. That same day, the department submitted a request to consult with the PAC in relation to Ms Manifold's request to see Henry.⁸¹ It does not appear that this request was actioned.⁸²
 82. On 30 April 2018 the department consulted with a child psychologist in relation to Ms Manifold's request to see Henry. The child psychologist advised that she was not supportive of the request. The child psychologist observed that it was her primary concern that facilitating the request would risk destabilising Henry's placement with Ms Klein.⁸³ The child psychologist advised that it was necessary to prioritise Henry's developmental needs and, in particular, the opportunity for Henry 'to build a secure attachment with his current carer during the active attachment phase.' The psychologist otherwise observed that there appeared to be no benefits relevant to Henry's connection to culture or family arising from the request.⁸⁴
 83. On 3 May 2018 the department communicated the advice of the PSW and the child psychologist to XYZ. The department advised XYZ that it did not support Ms Manifold's request to see Henry. The department requested that XYZ communicate this position to Ms Manifold.⁸⁵
 84. On 7 May 2018 XYZ notified Ms Manifold that the department had declined her request. XYZ's email referred Ms Manifold to the substance of the advice from the PSW and the child psychologist.⁸⁶
 85. That same day,⁸⁷ the department's Complaints Unit concluded its internal review of the matter. The internal review made a number of observations that were critical of the department's handling of the transition, including:
 - that the final placement determination did not involve Ms Manifold, causing Ms Manifold to feel isolated and unsupported

⁷⁶ Case note dated 13 April 2018.

⁷⁷ Case note dated 7 May 2018.

⁷⁸ Complaints Unit Review Report (undated), completed on 7 May 2018.

⁷⁹ Case note dated 23 April 2018.

⁸⁰ Case note dated 24 April 2018.

⁸¹ Case note dated 24 April 2018.

⁸² See case note dated 3 May 2018 ('[u]nfortunately we were not able to seek a PAC consult prior to [3 May 2018]...').

⁸³ Case notes dated 30 April 2018 and 2 May 2018.

⁸⁴ Case note dated 2 May 2018.

⁸⁵ Case note dated 3 May 2018.

⁸⁶ Case note dated 7 May 2018 (2).

⁸⁷ Letter from Ms Cathy Taylor to Ombudsman SA dated 8 June 2017 [sic].

- that the recommendations made by the child psychologist were not sufficiently adopted or reflected in the transition plan
- that the department did not provide Ms Manifold with ongoing support following the final handover
- that a meeting between all of the stakeholders did not take place until 3 January 2018
- that Ms Manifold was made to receive information from the various agencies in a piecemeal fashion
- that there appeared to be an overall 'lack of accountability' between XYZ and the department as to which agency made the decision to transition Henry into Ms Klein's care.⁸⁸

86. The internal review made the following recommendations:

- that the department decline Ms Manifold's request that Henry be returned to her care on the basis that this would not be in Henry's best interests
- that, on recognition of the advice from the PSW and the child psychologist, the department decline Ms Manifold's request for further contact with Henry
- that the department encourage Ms Manifold to prepare a 'life story' of Henry's time with her for provision to Henry
- that the case be presented to the department's Service Delivery and Practice Executive as a case study to inform and improve the support and inclusion of carers in decision-making
- that the department write to Ms Manifold to acknowledge the quality of care she provided to Henry.⁸⁹

87. On 30 May 2018 Ms Ward wrote to Ms Manifold to advise as follows:

I would like to take this opportunity to convey my gratitude for the care you have provided to [Henry]. I also acknowledge the transition of [Henry] from your care has been distressing to you.

I have sought information from the relevant departmental staff in relation to the concerns you have raised about the transition process and your request for [Henry] to be returned to your care or for you to have contact with him. An internal review at your request has also been undertaken.

I would like to advise you of the following matters.

Both the department and [XYZ] consider that [Henry]'s long term placement with his current carer is in his long term best interests. It was acknowledged that the transition period was too short and I understand a revised plan was developed at the time in response to this.

As you would recognise, [Henry]'s developmental needs must always be our primary consideration and in particular, the opportunity for him to build a secure attachment with his current carer and the stability of his environment is crucial in achieving this. As such, contact between yourself and [Henry] is not supported at this time.

If you would like to pursue this option or if you have any further queries that you would like to raise, please contact [XYZ] in the first instance or the Manager of the department's [redacted] Office[.] [...]

Thank you for raising your concerns.⁹⁰

88. The letter from the Deputy Chief Executive did not make any further reference to the conclusions or recommendations made by the internal review.

⁸⁸ Complaints Unit Review Report (undated), completed on 7 May 2018.

⁸⁹ Complaints Unit Review Report (undated), completed on 7 May 2018.

⁹⁰ Letter from Ms Fiona Ward to Ms Manifold dated 30 May 2018.

89. On 16 August 2018, following queries from my Office, Ms Ward caused a further letter to be sent to Ms Manifold:

I am now writing to provide you the findings and recommendations arising from [the] review.

The review found that communication with you and the processes involved in the transition of [Henry] from your care could have been better to minimise the distress it caused you. Consequently the reviewer recommended that your circumstances and experience be presented to the Service Delivery and Practice Executive in order to inform and improve the support of and inclusion of carers in decision making.

The reviewer upheld the decision of the Psychologists [sic], made during April and May, that contact is not supported at this time. Further the reviewer identified the importance of [Henry] having a story book of his time with you as it is important for him to have this information. We will make arrangements for a Support worker from [XYZ] to contact you to discuss this.

The final recommendation was to inform you of the quality of care you provided. I reiterate my words of 30 May and express my gratitude for the care you provided [Henry].

Submissions from Ms Manifold

90. Ms Manifold made a complaint to my Office on 25 May 2018. On 28 May 2018 she also forwarded to my Office a copy of her earlier letter to the Minister. I have assessed both documents as expressing the terms of Ms Manifold's complaint under the Ombudsman Act.

91. The gravamen of Ms Manifold's complaint is as follows:
- the department should not have determined to transfer Henry out of her care
 - she was not properly consulted in respect of that determination
 - the transition was poorly planned and was not child-focused
 - following the handover, the department should not have determined to deny her further contact with Henry
 - the department failed to address her concerns and failed to provide an explanation for action that was taken.

92. These matters broadly align with the four issues I have determined to investigate.

Response from the department

93. The department provided a response to the complaint by way of correspondence from the department's Chief Executive Officer, Ms Cathy Taylor, dated 8 June 2017 [sic], 13 July 2018 and 21 August 2018.

94. As to the basis for the determination to transfer Henry out of Ms Manifold's care, Ms Taylor submitted:

[Henry]'s placement with [Ms Manifold] was only ever intended to be short term while the department sourced a placement in line with the Aboriginal and Torres Strait Islander Child Placement Principle. Once a suitable placement was identified, it was determined that a transition should happen as quickly as possible while [Henry] was still in the active attachment phase of his development. [The department] did not hold any concerns about the quality of [Ms Manifold]'s care of [Henry] at any time.⁹¹

⁹¹ Letter from Ms Cathy Taylor dated 8 June 2017 [sic].

95. Ms Taylor described the determination to transfer Henry out of Ms Manifold's care as 'a case management decision made by [the department]', said to have arisen out of consultation with XYZ, the PAC and the department's Psychological Services unit.⁹²
96. Ms Taylor submitted that the department gave the child placement principles and the Aboriginal Child Placement Principle 'significant weight, together with considering Henry's attachment to Ms Manifold, and the timing of a transition given his age and long term care requirements.'⁹³
97. Ms Taylor submitted that the department 'considered Ms Manifold's views on a regular basis', including by:

amending the transition plan to reflect her concerns about conflicts with [Henry]'s daily routine and supporting her views around a longer overall transition period and once she had decided she would be prepared to care for [Henry] on a long term basis, present[ing] those views and the high quality of the care she provided to [Henry] as part of regular planning and consults about [Henry].⁹⁴

98. As to the basis for the department's determination to deny Ms Manifold further contact with Henry, Ms Taylor submitted:

During the transition phase, [Ms Manifold] became increasingly hostile during periods where [Henry] was getting to know the new carer, [Ruby], and on 20 January 2018, did not say goodbye or hug or kiss [Henry] when handing him over to [Ruby]. Offers of support from [XYZ] workers for [Ellie] were rejected [on 20 January 2018] and there are no records of contact between DCP and [Ellie] until April 2018.

Psychologist recommendations made on 10 January 2018 about supporting a continued relationship with [Ms Manifold] and [redacted] appear not to have been followed by the relevant office, including providing opportunities for regular contact and photos that will support [Henry] understand his life story.

It appears that by 12 January 2018, [Ellie]'s behaviour and the relationship between [XYZ] and [Ellie] regarding the transition process had deteriorated to a point where [XYZ] decided to focus on creating a positive relationship between the new carer [Ruby] and [Henry], rather than supporting [Ms Manifold]'s continued involvement in [Henry]'s life. When [Ms Manifold] approached DCP in late April 2018 to ask about access with [Henry], consults with a Principal Social Worker, Psychologist and Principal Aboriginal Consultant determined that unfortunately too much time had passed since [Henry] had contact with [Ellie] and that it would not be in his best interests as [Ellie] is not a family relative, is not a part of his community and access with her could possibly destabilise his placement with [Ruby].

Further submissions from Ms Manifold

99. In her response to my provisional report, Ms Manifold emphasised her attempts to reassure Henry prior to and during the handover:

Behind closed doors we hugged and kissed that little boy more times than you can imagine. We chased him around our house, to hear his laugh one more time, we dressed him beautifully, we brushed his hair to make sure he was perfectly presented and then hugged and kissed him some more.

When [Ruby Klein] came to our door I was worried I would burst into tears if I handed him to her. Therefore, I stood back and let my mum hand him over and contrary to what [XYZ] mentioned earlier, it was so that [Henry] didn't see me upset.

⁹² Letter from Ms Cathy Taylor dated 21 August 2018.

⁹³ Letter from Ms Cathy Taylor dated 8 June 2017 [sic].

⁹⁴ Letter from Ms Cathy Taylor dated 8 June 2017 [sic].

100. Ms Manifold otherwise provided context for her determination to delay requesting further contact with Henry:

There are a number of reasons I waited so long. [...] I was grieving [and with] our last foster baby [redacted], [XYZ] were the ones who recommended we wait several months to give that child time to settle. [...] And the [third] reason is because a relative of [Ruby] [Klein] stated in March that [Henry] still wasn't settled and he cried a lot when she went over to meet him. So, once again I did what I thought was right for [Henry] but once again [it] seems like it back fired on me.

Relevant law, policies, etc.

The statutory framework

101. The Children's Protection Act operated throughout the period relevant to my investigation. Certain provisions of the Children's Protection Act were, however, repealed on 26 February 2018 in light of the partial commencement of the Children and Young People (Safety) Act.
102. Thus, there are two statutory frameworks relevant to this matter – that which existed prior to and at the time of the transition (being the provisions of the Children's Protection Act); and that which existed at the time of Ms Manifold's request for further contact with Henry (being a synthesis of the Children's Protection Act and the Children and Young People (Safety) Act).
103. I have set out both statutory frameworks below.

The law as applicable to the transition

104. At the time, the objects of the Children's Protection Act were as follows:

3–Objects

- (1) The primary object of this Act is to keep children safe from harm and in the administration of this Act that object must, in all cases, be the paramount consideration.
- (2) Without limiting subsection (1), the Act also has the following objects:
 - (a) to ensure as far as practicable that all children are cared for in a way that allows them to reach their full potential; and
 - (b) to recognise the importance of families to children and promote caring attitudes and responses towards children among families and all sections of the community so that the need for appropriate nurture, care and protection (including protection of the child's cultural identity) is understood, risks to a child's wellbeing are quickly identified, and any necessary support, protection or care is promptly provided.

105. Section 5 of the Children's Protection Act set out particular provisions applicable to decisions made in respect of Aboriginal children:

5–Provisions relating to dealing with Aboriginal or Torres Strait Islander children

- (a1) In dealing with matters relating to Aboriginal or Torres Strait Islander children, the Aboriginal and Torres Strait Islander Child Placement Principle is to be observed.
- (1) No decision or order may be made under this Act as to where or with whom an Aboriginal or Torres Strait Islander child will reside unless consultation has first been had with a recognised Aboriginal organisation, or a recognised Torres Strait Islander organisation, as the case may require.

- (2) A person or court, in making any decision or order under this Act in relation to an Aboriginal or Torres Strait Islander child, must, in addition to complying with any other requirements under this Act, have regard—
 - (a) to the submissions made by or on behalf of a recognised Aboriginal or Torres Strait Islander organisation consulted in relation to the child; and
 - (b) if there has been no such consultation—to Aboriginal traditions and cultural values (including kinship rules) as generally expressed by the Aboriginal community, or to Torres Strait Islander traditions and cultural values (including kinship rules) as generally expressed by the Torres Strait Islander community, as the case may require; and
 - (c) to the general principle that an Aboriginal child should be kept within the Aboriginal community and a Torres Strait Islander child should be kept within the Torres Strait Islander community.
- (3) For the purposes of this Act, a recognised Aboriginal or Torres Strait Islander organisation is an organisation that the Minister, after consulting with the Aboriginal community or a section of the Aboriginal community, or the Torres Strait Islander community or a section of the Torres Strait Islander community, as the case may require, declares by notice in the Gazette to be a recognised Aboriginal organisation, or a recognised Torres Strait Islander organisation, for the purposes of this Act.

106. The Aboriginal Child and Torres Strait Islander Child Placement Principle (**Aboriginal Placement Principle**) is a nationally-recognised standard relevant to the placement of Aboriginal children. At the time, the Aboriginal Placement Principle was enshrined in regulation 4 of the Child Protection Regulations:

4—Aboriginal and Torres Strait Islander Child Placement Principle

- (1) For the purposes of section 5(a1) of the Act, the Aboriginal and Torres Strait Islander Child Placement Principle is as follows:
 - (a) when dealing with a matter relating to placement of an Aboriginal or Torres Strait Islander child, consideration must be given to the child's cultural needs and identity;
 - (b) when an Aboriginal or Torres Strait Islander child is being placed in alternative care (other than care provided in a detention facility), consideration must be given to placing the child with the first in order of priority of the following persons who is available to provide the care:
 - (i) a member of the child's family, as determined by reference to Aboriginal or Torres Strait Islander culture;
 - (ii) a member of the child's community who has a relationship of responsibility for the child, as determined by reference to Aboriginal or Torres Strait Islander traditional practice or custom;
 - (iii) a member of the child's community, as determined by reference to Aboriginal or Torres Strait Islander traditional practice or custom;
 - (iv) a person—
 - (A) in the case of an Aboriginal child—of Aboriginal cultural background; or
 - (B) in the case of a Torres Strait Islander child—of Torres Strait Islander cultural background;
 - (v) a person who is able to ensure that the child maintains significant contact with the child's family (as determined by reference to Aboriginal or Torres Strait Islander culture), the child's community or communities and the child's culture;
 - (c) if the placement of a child in alternative care in accordance with paragraph (b) is objected to by the child on reasonable grounds, consideration must be given

to placing the child with the next person (determined in accordance with paragraph (b)) available to provide the care.

107. Section 51 of the Children's Protection Act provides, *inter alia*, for the power of the Minister to place a child with a foster carer:

51—Powers of Minister in relation to children under the Minister's care and protection

- (1) Subject to this Act, the Minister may from time to time make provision for the care of a child who is under the guardianship of the Minister or of whom the Minister has custody pursuant to this Act, in any of the following ways:
- [...]
- (b) by placing the child in the care of an approved foster parent or any other suitable person;
- [...]
- (f) by making such other provision for the care of the child as the circumstances of the case may require.
- (2) In making provision for the care of a child pursuant to subsection (1), the Minister must, if appropriate, have regard to the desirability of securing settled and permanent living arrangements for the child.

108. Section 57 of the Children's Protection Act provides that the Minister may delegate any of his or her powers under the Children's Protection Act. At all material times, the Minister's powers under section 51 of the Act were delegated to the Chief Executive and certain senior officers of the department.⁹⁵

The law as applicable following the transition

109. Sections 3 and 5 of the Children's Protection Act were repealed on 26 February 2018.
110. Chapter 2 Part 2 of the Children and Young People (Safety) Act now provides for certain administrative and operational priorities, including, relevantly:

Part 2—Priorities in the operation of this Act

7—Safety of children and young people paramount

The paramount consideration in the administration, operation and enforcement of this Act must always be to ensure that children and young people are protected from harm.

8—Other needs of children and young people

- (1) In addition to the paramount consideration set out in section 7, and without derogating from that section, the following needs of children and young people are also to be considered in the administration, operation and enforcement of this Act:
- (a) the need to be heard and have their views considered;
- (b) the need for love and attachment;
- (c) the need for self-esteem;
- (d) the need to achieve their full potential.

111. Section 11 of the Children and Young People (Safety) Act sets out certain principles relevant to the placement of children:

11—Placement principles

- (1) The *placement principles* are as follows:

⁹⁵ DCP, Delegations of powers and responsibilities under the *Children's Protection Act 1993*.

- (a) all children and young people who have been removed from the care of a person under this Act should be placed in a safe, nurturing, stable and secure environment;
 - (b) the preferred option in relation to such placement of a child or young person is to place the child or young person with a person with whom they have an existing relationship;
 - (c) approved carers are entitled to be, and should be, involved in decision-making relating to children and young people in their care.
- (2) Each person or body engaged in the administration, operation or enforcement of this Act must exercise their powers and perform their functions so as to give effect to the placement principles.
- (3) However, this section and the placement principles do not displace, and cannot be used to justify the displacement of, section 7.

112. Section 12 of the Children and Young People (Safety) Act provides for a modified version of the Aboriginal Placement Principle:

12–Aboriginal and Torres Strait Islander Child Placement Principle

- (1) Subject to the placement principles, the objects and principles set out in this section apply to the placement of Aboriginal and Torres Strait Islander children and young people under this Act.
- (2) The objects of this section include—
 - (a) maintaining the connection of Aboriginal and Torres Strait Islander children and young people with their family and culture; and
 - (b) enabling Aboriginal and Torres Strait Islander people to participate in the care and protection of their children and young people; and
 - (c) achieving the objects set out in the preceding paragraphs (as well as reducing the incidence of the removal of Aboriginal and Torres Strait Islander children and young people) by encouraging Aboriginal and Torres Strait Islander people, their children and young people and State authorities to act in partnership when making decisions about the placement of Aboriginal and Torres Strait Islander children and young people under this Act.
- (3) The *Aboriginal and Torres Strait Islander Child Placement Principle* is as follows:
 - (a) if an Aboriginal or Torres Strait Islander child or young person is to be placed in care under this Act, the child or young person should, if reasonably practicable, be placed with 1 of the following persons (in order of priority):
 - (i) a member of the child or young person's family;
 - (ii) a member of the child or young person's community who has a relationship of responsibility for the child or young person;
 - (iii) a member of the child or young person's community;
 - (iv) a person of Aboriginal or Torres Strait Islander cultural background (as the case requires), (determined in accordance with Aboriginal or Torres Strait Islander traditional practice or custom);
 - (b) if an Aboriginal or Torres Strait Islander child or young person is unable to be placed with a person referred to in paragraph (a), or it is not in the best interests of the child or young person to do so, the child or young person should be given the opportunity for continuing contact with their family, community or communities and culture (determined in accordance with Aboriginal or Torres Strait Islander traditional practice or custom);
 - (c) before placing an Aboriginal or Torres Strait Islander child or young person under this Act, the Chief Executive or the Court (as the case requires) must, where reasonably practicable, consult with, and have regard to any submissions of, a recognised Aboriginal or Torres Strait Islander organisation.

- (4) This section and the Aboriginal and Torres Strait Islander Child Placement Principle do not displace, and cannot be used to justify the displacement of, section 7.

[...]

- (8) In this section— *recognised Aboriginal or Torres Strait Islander organisation* means—

- (a) in relation to the placement of an Aboriginal child or young person—an organisation that the Minister, after consulting with the Aboriginal community or a section of the Aboriginal community, declares by notice in the Gazette to be a recognised Aboriginal organisation for the purposes of this section[.]

113. Sections 51 and 57 of the Children’s Protection Act (providing for the Minister’s power to make arrangements for the care of children under guardianship of the Minister and for the Minister’s power of delegation, respectively) were not altered or repealed by commencement of the Children and Young People (Safety) Act.

The Charter of Health and Community Services Rights

114. The Charter of Health and Community Services Rights is established in accordance with Part 3 of the Health and Community Services Complaints Act. The Charter provides for eight rights that apply to the provision or use of most health and community services within South Australia. Under section 3 of the Health and Community Services Complaints Act, a community service includes ‘a service for the care or protection of a child who is, or has been or may be at risk’ within the meaning of the Children and Young People (Safety) Act.⁹⁶

115. The following Charter rights are particularly relevant to the matter:

6. PARTICIPATION - Right to actively participate.

I have a right to be fully involved in decisions and choices about services planned and received. I have a right to support and advocacy so I can participate. I have a right to seek advice or information from other sources. I have a right to give, withhold or withdraw my consent at anytime.

[...]

8. COMMENT - Right to comment and / or complain.

I have a right to be listened to and to comment on, or make a complaint about services sought or provided to me. I have a right to have my complaint dealt with properly and promptly, and without retribution as a result of having made a complaint. I have a right to a representative of my choice to support and advocate for me when making a complaint. My feedback and complaints are managed openly to ensure improvements.

The Transition Planning Guidelines

116. Throughout the period relevant to my investigation, the department maintained a set of guidelines applicable to transition planning, *Transition Planning Between Placements for Children in Care (the Transition Planning Guidelines)*.
117. The Transition Planning Guidelines provide for some general principles relevant to the successful management of placement transitions:

⁹⁶ Prior to 17 December 2017, section 3 defined a community service as including ‘a service for the care or protection of any child who has been abused or neglected, or allegedly abused or neglected, and includes any service that relates to the notification of any case of child abuse or neglect (or alleged child abuse or neglect), or the investigation of a case where a child may be in need of care or protection, or any subsequent action taken by a service provider arising from any such investigation’.

Wherever possible, Families SA should strive to avoid placement changes unless there is a reasonable chance of a new placement being more able to meet a child's needs and be a successful and positive experience for the child. [...]

General principles for successful transition management:

- Minimise transitions
- Move only to well-matched appropriate placements
- Plan the transitioning processes
- Identify effective transition strategies that will assist to reassure the child
- Monitor the child's adjustment and coping during the transition process, and allow time for them to process the change.
- Keep any *positive* influences in the child's life consistent during the transition (eg school, therapist, mentor, family contact).

118. The Transition Planning Guidelines primarily concern the supports to be provided to the child and the new carer; however, the following passages are relevant to the involvement of the previous carer in the transition process:

Assist the child in transitioning from the previous carers (if appropriate-this may not always be useful when transferring from emergency care or possible when the child is being removed due to carer issues):

- Bring pictures of their previous carers with them.
- Encourage contact with the previous carers as soon as possible after the transition into the new carer [sic] full time care has been completed. This gives important messages to the child about not being 'forgotten' and suggests that the previous carer's [sic] still think and care about the child, even if the child no longer lives with them. Don't underestimate the importance of the child knowing they are being "held in mind". Like mountain climbing, transition is precarious and one must never let go of a secure footing before the new one is established. A child should never be pushed from a secure psychological footing. Children will benefit from the comfort of having contact with the previous carer, while the relationship with the new carer is still developing.

119. The Transition Planning Guidelines provide that, although there is 'no prescriptive formula for when and how long transition should occur':

[i]n general, a 4-6 week period is recommended, unless there are special reasons as to why it should vary. This allows the child to get to know their new carers, but doesn't unduly prolong the process and make it hard for them to let go of where they currently live

Whether the Department for Child Protection erred in its determination to transfer the complainant's former foster child into the care of another foster carer

120. The department's power to place a child in the care of an approved foster carer is drawn from sections 51 and 57 of the Children's Protection Act. The power is subject to other provisions of the Children's Protection Act and to the obligation, where appropriate, to 'have regard to the desirability of securing settled and permanent living arrangements for the child'.
121. Ms Manifold has complained that the department's decision to transfer Henry into the care of Ms Klein was inappropriate because it was made in circumstances where Ms Manifold had expressed a willingness and desire to provide long-term care to Henry, and because there were no reasons or no compelling reasons to effect the transition in the circumstances.

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122. It is not disputed that Henry's placement with Ms Manifold was designated as temporary in nature. Until approximately December 2017, there was a common understanding between the parties that the department was seeking to locate a culturally appropriate, long-term carer for Henry.
123. It is Ms Manifold's recollection that the prospect of Henry remaining in her long-term care was first suggested to her by the department during the telephone call on 8 December 2017. The department's case notes do not support this contention. The case notes suggest that Ms Manifold first expressed her desire to assume long-term care for Henry to the agencies by email dated 11 December 2017.
124. In the circumstances, very little turns on the distinction – in either case, the relevant exchange took place shortly after XYZ had informed Ms Manifold of its intention to undertake the transition, but prior to substantive commencement of the transition arrangements. There was, in my opinion, sufficient time to reconsider the decision, if indeed any decision had been made at that time.
125. In my view, the department should have arranged for a meeting of all the stakeholders upon being made aware of Ms Manifold's request that Henry be placed in her long-term care. It is of note that section 11(1)(c) of the Children and Young People (Safety) Act (which, at the relevant time, had not commenced) recognises that 'approved carers are entitled to be, and should be, involved in decision-making relating to children and young people in their care.' The Charter of Health and Community Services Rights also recognises the right to participate in decisions relating to service-delivery.
126. I am unable to determine from the department's records precisely when the department formally determined that Henry was to be transferred into the care of Ms Klein. It appears that the determination may have been made during the 21 December 2017 meeting with XYZ, although this is by no means clear from the case notes.
127. It is difficult to escape the impression that that decision was effectively, if not actually, made by XYZ. Certainly the case notes suggest a willingness on the part of the department to cede active responsibility for the decision to XYZ.
128. The internal review completed by the department's Complaints Unit concluded that there appeared to be a 'lack of accountability from both DCP and XYZ as to whom ultimately made the decision' to transfer Henry out of Ms Manifold's care. I endorse that conclusion.
129. One can only imagine Ms Manifold's confusion at the situation. To which agency did she need to address her appeals for reconsideration? As a matter of law, it should have been the department, acting as delegate to the Minister.
130. The decision should not have been communicated to Ms Manifold unless and until the department had determined to support the transition. It should have been communicated in a manner that clearly identified the department as the relevant decision-maker and in a manner that clarified the role of XYZ as consulting organisation under section 5 of the Children's Protection Act.
131. The above concerns are directed at the process observed by the department in making the relevant determination. For the reasons that follow, I am not of the opinion that the determination itself was in error.
132. [Redacted].

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133. [Redacted]. XYZ provided the department with cogent reasons as to why it was inclined to support the transfer, notwithstanding the quality of care being provided by Ms Manifold.
 134. Section 5(2)(c) of the Children's Protection Act also obliged the department to have regard to the 'general principle that an Aboriginal child should be kept within the Aboriginal community'.
 135. It was, in my view, open to the department to conclude that Henry's transfer to Ms Klein was most consistent with that general principle.
 136. Section 5(a1) of the Children's Protection Act also required the department to observe the Aboriginal Placement Principle. The Aboriginal Placement Principle required the department to give consideration to Henry's 'cultural needs and identity'. It is the role of the PAC to provide advice on such matters.⁹⁷ In this case, the department received advice from the PAC to the effect that the transfer to Ms Klein was most consistent with Henry's cultural needs.
 137. The Aboriginal Placement Principle also required the department to give consideration to a placement hierarchy, the effect of which was to give preference to a decision to place Henry in the care of a person of Aboriginal cultural background. Ms Klein was such a person.
 138. The requirements of section 5 of the Children's Protection Act do not detract from the 'paramount consideration' of the Act, being 'to keep children safe from harm'. Clearly, and notwithstanding the above considerations, the department could not reasonably have given effect to the transition if it had cause to believe that doing so would expose Henry to unnecessary harm.
 139. It is troubling that the department did not seek the advice of a psychologist in respect of either the initial transition proposal or, subsequently, the two competing proposals. There was clearly the need to consider Henry's attachment needs.⁹⁸ Such needs are now recognised in the Children and Young (People) Safety Act.⁹⁹
 140. The department ultimately did seek psychological advice in respect of the terms of the transition plan, and then, subsequently, in respect of the difficulties with the access visits. It is of note that the psychologist did not warn against undertaking the transition. The question was not specifically put to the psychologist; however, it is clear that Henry's attachment needs were actively considered at this time.¹⁰⁰
 141. Having regard to Henry's age and history of care, it may ultimately have been open to the department, on taking psychological advice, to have concluded that the risks of the transition outweighed the relevant cultural considerations.
 142. Regrettably for Ms Manifold, this is not to say that the department's determination to place Henry in the care of Ms Klein miscarried by way of administrative error. Having regard to section 5 of the Children's Protection Act and the additional considerations

⁹⁷ DCP, *Aboriginal Cultural Identity Support Tool*, p. 12.

⁹⁸ Section 51(2) of the Children's Protection Act states that the Minister 'must, if appropriate, have regard to the desirability of securing settled and permanent living arrangements for the child.' The department also maintains materials on the attachment needs of children in out-of-home care. See, e.g., Child Family Community Australia, *Children's attachment needs in the context of out-of-home care*, dated November 2016 (resource available on the department's intranet).

⁹⁹ Section 8(1)(b) provides that a child or young person's 'need for love and attachment' is to be considered in the administration, operation and enforcement of the Children and Young People (Safety) Act.

¹⁰⁰ Case note dated 10 January 2018 ('I have some concerns regarding the severing of [Henry]'s primary attachment relationships in this change in placement and I recommend that support is provided to [...] [Ruby] to best support [Henry]'s needs following the change in caregivers...').

identified by Ms Bailey,¹⁰¹ that determination was, in my view, within the range of acceptable administrative outcomes.

143. On all of the information before me, I am not satisfied that the department's determination to place Henry in the care of Ms Klein was contrary to law, unreasonable or wrong within the meaning of section 25(1) of the Ombudsman Act.

Opinion

It is my final view that the determination of the Department for Child Protection to transfer the complainant's foster child into the care of another carer was not contrary to law, unreasonable or wrong within the meaning of section 25(1) of the Ombudsman Act.

This notwithstanding, it is my final view that the Department for Child Protection acted in a manner that was wrong within the meaning of section 25(1) of the Ombudsman Act, insofar as it:

- omitted to arrange for a meeting of all the stakeholders upon being made aware of the complainant's request that her foster child be placed in her long-term care
- ceded responsibility for the transition determination to XYZ
- omitted to seek the advice of a psychologist in respect of either the initial transition proposal or, subsequently, the two competing proposals.

I have set out some recommendations at the conclusion of this report.

Whether the Department for Child Protection erred in formulating and/or managing the transfer of the complainant's former foster child into the care of another foster carer

144. The original transition plan was not appropriate. The department recognised this fact and made efforts to rectify the situation. To the credit of the department, it solicited Ms Manifold's involvement in that process.
145. The various revisions to the transition plan ultimately provided for a transition period of approximately 42 days. That was consistent with the period recommended by the psychologist and in the department's Transition Planning Guidelines.
146. I have already expressed the view that the department should have arranged to meet with Ms Manifold and XYZ to discuss the transition much earlier than it did. The department's internal review concluded that this omission was likely responsible for Ms Manifold's uncertainty about the decision and the process. I endorse that conclusion.
147. The psychologist recommended that the department seek Ms Manifold's views as to the possibility of her maintaining an involvement in Henry's life following the final handover. The department was advised that such involvement would be in Henry's best interests. The Transition Planning Guidelines similarly recommended post-handover contact.
148. The department communicated the psychologist's advice to XYZ; however, it did little more to ensure that the advice was observed.
149. There is in fact no evidence to suggest that the department or XYZ ever discussed the possibility of ongoing contact with Ms Manifold.

¹⁰¹ Case note dated 3 January 2018. See paragraph 53 of this report.

150. I recognise that the nature and form of Ms Manifold's reaction to the transfer decision presented challenges to the department. To a certain extent, that reaction might have been avoided had the possibility of Ms Manifold maintaining a role in Henry's life been promptly discussed and incorporated into the transition plan.
151. The department's omission to do so was, I fear, to both Henry and Ms Manifold's greater detriment.
152. It is difficult to escape the impression that, had the matter been handled more sensitively, Henry and Ms Manifold might still maintain some form of relationship.
153. The department in its administration of the child protection regime must give paramount consideration to the needs of the child. It must sometimes do so at the expense of the interests or legitimate expectations of other persons. But it is not always a zero-sum equation.
154. Foster carers can and do form an integral part of the child protection system. There is a need to ensure that carers are fully involved in decisions affecting the children in their care. This fact was recognised by the Child Protection Systems Royal Commission¹⁰² and is now enshrined in certain provisions of the Children and Young People (Safety) Act.¹⁰³
155. In all of the circumstances, I am of the view that the department's omission when planning the transition to adequately consider and make arrangements for the prospect of further contact between Ms Manifold and Henry was unreasonable within the meaning of section 25(1)(b) of the Ombudsman Act.

Opinion

It is my final view that the omission of the Department for Child Protection when planning a placement transition to adequately consider and make arrangements for the prospect of further contact between the complainant and her former foster child was unreasonable within the meaning of section 25(1)(b) of the Ombudsman Act.

I have set out some recommendations at the conclusion of this report.

Whether the Department for Child Protection erred in its determination, following a placement transition, to deny the complainant further contact with her former foster child

156. Ms Manifold's request for further contact with Henry was communicated to the department via XYZ on 9 April 2018 and then subsequently via Ms Manifold's correspondence to the Minister's office dated 16 April 2018.
157. As under the previous statutory framework, section 7 of the Children and Young People (Safety) Act required the department in considering Ms Manifold's request to give paramount consideration to the need to ensure that Henry be protected from harm. Section 8(1) of the Act further obliged the department to have regard, *inter alia*, to Henry's attachment needs.
158. In this case, both the Principal Social Worker and the psychologist recommended against the department facilitating Ms Manifold's request. Both practitioners expressed the view that the requested contact risked destabilising Henry's attachment to Ms Klein.

¹⁰² *The Life They Deserve*, Child Protection Systems Royal Commission Report, Vol. 1, August 2016, p. xx.

¹⁰³ Children and Young People (Safety) Act, sections 11(1)(c) and 82(1).

It was appropriate that the department have regard to this advice when considering Henry's safety and attachment needs.

159. Section 11(1)(c) of the Children and Young People (Safety) Act provided that Ms Klein was entitled to be involved in the decision. The department was informed that Ms Klein held concerns about the request. There is evidence that the department had regard to those concerns.¹⁰⁴
160. The department also had regard to the submissions of XYZ. In the circumstances, there was no statutory requirement that the department do so [redacted]. It was nevertheless appropriate that the department give consideration to XYZ's views [redacted].
161. Having regard to all of the information that was before the department and the applicable statutory framework, I do not consider that the determination to deny Ms Manifold's request was contrary to law, unreasonable or wrong within the meaning of section 25(1) of the Ombudsman Act.
162. Indeed, I consider that it would have been difficult for the department to have reached any other decision in the circumstances.
163. I suspect that Ms Manifold may find it very hard to come to terms with this conclusion; particularly in light of my earlier criticisms of the department's failure to consider and make arrangements for ongoing contact during the transition planning process.
164. At the time, such arrangements were considered appropriate and necessary in light of Henry's specific attachment needs. Unfortunately for Ms Manifold, those very same considerations now appear, at least for the time being, to militate against her having further contact with Henry.

Opinion

It is my final view that the determination of the Department for Child Protection, following a placement transition, to deny the complainant further contact with her former foster child was not contrary to law, unreasonable or wrong within the meaning of section 25(1) of the Ombudsman Act.

Whether the Department for Child Protection erred in omitting to communicate the outcomes of an internal review to the complainant in a timely manner

165. The department concluded its internal review into the matter on 7 May 2018.
166. The internal review recommended that:
 - the department decline Ms Manifold's request that Henry be returned to her care
 - the department decline Ms Manifold's request for further contact with Henry
 - the department encourage Ms Manifold to prepare a 'life story' of Henry's time with her for provision to Henry
 - the case be presented to the department's Service Delivery and Practice Executive as a case study to inform and improve the support and inclusion of carers in decision-making
 - the department write to Ms Manifold to acknowledge the quality of care she provided to Henry.

¹⁰⁴ Case note dated 23 April 2018.

167. The Deputy Chief Executive wrote to Ms Manifold on 30 May 2018 to advise that the department had undertaken an internal review in respect of the matter. The Deputy Chief Executive advised Ms Manifold of the internal review's conclusions in respect of her requests for reconsideration and acknowledged the quality of Ms Manifold's care for Henry.
168. The Deputy Chief Executive's letter did not advert to the recommendation that Ms Manifold prepare a 'life story' for Henry. Nor did the Deputy Chief Executive advise Ms Manifold of the recommendation that her experience be used as a case study for the improvement of service provision. Those matters were ultimately communicated to Ms Manifold on 16 August 2018, following a prompt from my Office.
169. The delay in communicating those matters to Ms Manifold was unfortunate because they had the potential to ameliorate the impact of the department's decision to deny Ms Manifold's request for access.
170. The omission to solicit a 'life story' for provision to Henry is particularly concerning because the internal review judged such action to be 'imperative' to Henry's needs. As the internal review noted, the activity may also have been cathartic for Ms Manifold.
171. I recognise that at time of writing the department has implemented all of the recommendations made by the internal review.
172. I am nevertheless of the view that the department's failure to advise Ms Manifold of certain of the recommendations made by the internal review until 16 August 2018 was wrong within the meaning of section 25(1)(g) of the Ombudsman Act.

Opinion

It is my final view that the omission of the Department for Child Protection to communicate the outcomes of an internal review to the complainant in a timely manner was wrong within the meaning of section 25(1)(g) of the Ombudsman Act.

I do not consider it necessary to make any recommendations in respect of this issue.

Summary and Recommendations

My final views are as follows:

1. The determination of the Department for Child Protection to transfer the complainant's foster child into the care of another carer was not contrary to law, unreasonable or wrong within the meaning of section 25(1) of the Ombudsman Act.
2. The Department for Child Protection acted in a manner that was wrong within the meaning of section 25(1) of the Ombudsman Act, insofar as it:
 - omitted to arrange for a meeting of all the stakeholders upon being made aware of the complainant's request that her foster child be placed in her long-term care
 - ceded responsibility for the transition determination to XYZ
 - omitted to seek the advice of a psychologist in respect of either the initial transition proposal or, subsequently, the two competing proposals.
3. The omission of the Department for Child Protection when planning a placement transition to adequately consider and make arrangements for the prospect of further contact between the complainant and her former foster child was unreasonable within the meaning of section 25(1)(b) of the Ombudsman Act.

4. The determination of the Department for Child Protection, following a placement transition, to deny the complainant further contact with her former foster child was not contrary to law, unreasonable or wrong within the meaning of section 25(1) of the Ombudsman Act.
5. The omission of the Department for Child Protection to communicate the outcomes of an internal review to the complainant in a timely manner was wrong within the meaning of section 25(1)(g) of the Ombudsman Act.

In respect of the errors identified above, I make the following recommendations under section 25(2) of the Ombudsman Act:

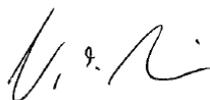
1. That the department issue an apology to Ms Manifold in respect of the errors identified at paragraphs 2, 3 and 5, immediately above.
2. That the department consult with a child psychologist to determine whether other steps can be taken, consistent with Henry's best interests, to allow Henry, as he develops, to understand and reflect on the connection he shared with Ms Manifold.
3. That the department consider whether other supports can be offered to Ms Manifold to assist her, if she so wishes, to continue her participation as a foster carer.
4. That the Department for Child Protection review and make appropriate amendments to the Transition Planning Guidelines (or equivalent) and any ancillary documents so as to:
 - (a) provide guidance to practitioners as to the circumstances in which psychological advice should be obtained in respect of a proposed transition; and
 - (b) recognise the need to provide support and inclusion to existing carers.
5. That my final report be communicated to the department's Service Delivery and Practice Executive to supplement the case study recommended by the department's internal review.

In accordance with section 25(4) of the Ombudsman Act the department should report to the Ombudsman by **5 January 2019** on what steps have been taken to give effect to the recommendations above; including:

- details of the actions that have been commenced or completed
- relevant dates of the actions taken to implement the recommendation.

In the event that no action has been taken, reason(s) for the inaction should be provided to the Ombudsman.

I have also sent a copy of my report to the Minister for Child Protection as required by section 25(3) of the Ombudsman Act.



Wayne Lines
SA OMBUDSMAN

5 November 2018