

INVESTIGATION REPORT ON THE OPERATION OF THE CHAPLAINCY SERVICES WITHIN FIVE GOVERNMENT RURAL SCHOOLS OF THE NORTHERN TERRITORY



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A handwritten signature in black ink, appearing to read 'Carolyn Richards'.

CAROLYN RICHARDS
Ombudsman

November 2010



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1.0 Executive Summary

This investigation report is the result of an own motion investigation following multiple complaints to my office about the Living Waters Chaplaincy Service, about the respective chaplains, pastors and about the Department of Education and Training (DET). Five Northern Territory Government rural schools: Humpty Doo Primary School, Bees Creek Primary School, Berry Springs Primary School, Girraween Primary School and Taminmin High School, engaged the services of the Living Waters Chaplaincy Service through a Commonwealth funding arrangement. The funding arrangement was called the National Schools Chaplaincy Programme (NSCP) and commenced within the respective schools during late 2007 and early 2008.

Prior to the commencement of the NSCP, Living Waters Chaplaincy Service provided pastors to most of the schools under the scope of this investigation, with the exception of Bees Creek Primary School. The pastors voluntarily provided various services to students ranging from one-on-one sessions, group activities and support following critical incidents. The services provided by the pastors in two of the schools were religious based and continued with the commencement of the NSCP. One of the schools discontinued the religious component in 2008. After the introduction of the NSCP the pastors came to be called chaplains.

The chaplains continued to have close regular contact with the young students despite emerging parental concerns, which peaked late in 2007 when it was revealed that school chaplains were providing accommodation and caretaker work to a convicted paedophile on the site of the Living Waters Chaplaincy Service at Humpty Doo. The site was called the 'Meeting Place' and was located next to St Francis of Assisi Primary School and in close walking distance to Humpty Doo Primary School, Taminmin High School and other child services. This decision by the chaplains resulted in parents closely scrutinising processes and procedures relating to the chaplaincy service, with many complaints lodged to our office. The parents of one student captured their concerns in a letter to their School Principal:

Dear

As you are aware we have strong concerns regarding the suitability of the Living Waters Uniting Church providing a Chaplaincy Service for our children atPrimary School.

These concerns stem from the fact that they are accommodating a re-offended paedophile and his wife at the same residence as Arise After School Care, next to Humpty Doo Child Care Centre, and close to Humpty Doo Primary School, St Francis of Assisi Primary School, Taminmin High School, the Humpty Doo Village Green Park, skate park, Scout Hall, Humpty Doo Playgroup, Girl Guides and the school bus exchange.

They have invited this man onto the property, exposing all our children to him and did not feel that this was inappropriate?

We understand that the church is there to help everyone in need, but to place a re-offending paedophile in the middle of schools and a

child care centre is like placing a drug addict in a pharmacy!!! We really wonder how they think that this is appropriate help for anyone... the paedophile or the children around him.

If concerned locals didn't speak up, this community would still be unaware of his presence because the church did not willingly warn any of the child services in the area, nor did they feel that this address was not appropriate for a repeat offender.... These are the same people that we are supposed to trust our vulnerable children with, to support and provide guidance about ethics, values and relationships. We feel that they have a different perception as to what is right and wrong and with who they are trying to protect.

.....

Due to the lack of duty of care to all children in the rural sector, we have lost all respect and confidence in this church and strongly advise that we do not invite them to our school. If parents wish to use their services then maybe they could contact the church direct. We would prefer that this is not the church that our school respects and supports the services from. Surely we could find another service that has only our children's best interests at heart.

Thank you for listening to our concerns, we only want what is best for our children.

Kind Regards
Signed

October 18, 2007

Through initial enquiries made by this office it was established that the issues of concern extended beyond those originally raised by the parents and so by the powers bestowed in section 16(1) of the *Ombudsman (Northern Territory) Act*, an own motion investigation was commenced.

All parents interviewed expressed concerns about the chaplaincy service and, in particular, the chaplaincy service providers. Most of the parents interviewed had lodged requests with their schools specifying that no contact be made between their children and the chaplains. A number of parents eventually removed their children from the respective schools. These parents were concerned that the chaplains provided support services to paedophile/s. The parents perceived that, if children familiarised themselves with the chaplains as safe persons then, by association, if a paedophile was seen by the child with a chaplain, the child may consider the paedophile as a safe person.

Parents expressed concerns that, it would be a serious conflict of interest for chaplains to provide services to children within close proximity of a paedophile if that person was also receiving support services from the chaplains. The concern relating to the parents worried by the chaplains' conflict of interest was promptly addressed by DET with the result that the convicted paedophile and his wife moved away from the area. However, parents remained anxious about their children's wellbeing and continued to alert other parents, which resulted

in further queries about the way the chaplains operated and the related processes and procedures.

Parents were particularly worried about the chaplains' access to children, record keeping, type of services provided, religious propagation and other shortcomings of the service, particularly that chaplains were allegedly providing a counselling service without holding recognised counselling qualifications.

This Office conducted interviews with the three chaplains, a Consultant Investigator engaged by DET, School Principals, Assistant Principals, DET staff, DET management and DET legal services. The interviews revealed that most of the schools were under resourced to adequately meet the emotional and social needs of the children. This finding was rejected by DET. The Department's response to my draft investigation report was:

this is an oversimplification. It is noted that such a view must be considered in the light of a perception seemingly held by some parts of the community that schools are 'a one stop shop' in relation to all needs and problems of all children. Schools of course are highly concerned and committed to providing the best outcomes for students and strive hard to achieve same. However, there appears to be a view held by some significant percentage of the community that schools can provide a solution to the needs of society in relation to each and every problem of children, when clearly the core function is education. So the question of adequate resourcing or otherwise needs to be considered in light of the seemingly ever increasing expectation on schools to provide an increasing range of services for children at times arguably beyond the delivery of education.

My question then becomes, why offer chaplaincy services when the service goes 'beyond the delivery of education'. The answer is; because an adequately trained and experienced chaplain can potentially make a valuable contribution to the behavioural, emotional and spiritual development of students. The response of DET ignores the obligation DET has when it allows third parties into its schools, allows access by those third parties to information about students, some of it sensitive, and holds out those third parties as having the same status or standing as other staff at the school. The chaplains were third parties because they were not employed by DET and at the time had no agreement with DET or the schools they serviced. There is no practical definition of 'chaplain' in the DEEWR guidelines for the NSCP. There are no nationally consistent criteria for a person to be called a chaplain. The chaplains in this investigation were appointed by the General Secretary – Northern Synod Uniting Church, who defined 'chaplain' as a 'person who provides chaplaincy services in accord with a chaplaincy services agreement'.

Services provided by the chaplains appeared to fill some of the gaps experienced within the schools, providing a degree of emotional and social support through individual services, group activities and group programs. Indeed, the chaplaincy service believed that its delivery of services benefited the students and teachers. However, a detailed examination of the processes and procedures within the schools revealed problems and identified shortcomings.

This investigation revealed that chaplains took part in the wellbeing teams at the schools, including Taminmin High School. The team at Taminmin High School differed from the other schools since that team included a counsellor, in addition to other professionals, who predominantly serviced the high school and, to a certain extent, was accessed by the primary schools.

Access to the wellbeing teams was based on an assessment of the child's needs. Parents were concerned that the chaplains' team membership automatically guaranteed the chaplain's access to a child's sensitive information discussed by the wellbeing team, without the child's parental consent.

The response provided by DET in relation to the draft investigation report stated:

The participation of the chaplains in the school wellbeing teams was a natural and generally uncontentious matter. However any participation in wellbeing meetings in relation to other than opt in students was arguably ill conceived. The department has introduced policy to ensure there is no repetition of this situation.

School Principals appeared to understand that the chaplains were not employed by DET but nonetheless, there were general perceptions that chaplains were a 'member of staff'. The perception appeared to cause a blurred line between the rights and privileges of the chaplains compared with those of staff.

This investigation reviewed the processes and procedures associated with the chaplaincy service prior and post the commencement of the NSCP. In many areas, policies and procedures associated with the chaplaincy service were found to be inadequate or non-existent. Particularly concerning was the risk of deception and scheming evidenced by the proposed unlawful action to boycott teaching services to children of the complainants.

Berry Springs Primary School was one of the few schools to have developed a risk management document, which identified contingent situations and how they should be dealt with. The comprehensive risk management process for regulating chaplaincy procedures at the Berry Springs Primary School could be considered useful as a guide for other schools.

On close examination of the provision of chaplaincy services, one-on-one pastoral care services caused the most serious concern. Students experiencing domestic violence, abuse, behavioural problems and those recorded as exhibiting physical symptoms were referred to the chaplains for one-on-one pastoral care. A review of chaplain notes revealed that the services did not simply include a listening ear but the development of a level of intervention with strategies for coping and change. In one instance a psychologist who later treated a student was of the opinion that the chaplain provided psychological services without the required qualifications. The most salient point is that nobody knew what services were provided during one-on-one sessions nor the appropriateness or quality of those services.

One-on-one sessions created circumstances bound by a level of confidentiality which kept School Principals at a distance. None of the Principals interviewed by this investigation sought to review the chaplains' notes to confirm that they remained within the confines of pastoral care. Teachers were required to attend chaplaincy group sessions as their duty of care could not be delegated yet teachers were not required to attend one-on-one sessions where a child might be exposed to increased risk.¹

¹ The response by DET to the draft investigation report stated '*that students attended one-on-one sessions only with parental permission, with almost no exception. In such cases while the sessions occurred on school premises, the teacher's duty of care would be qualified by the parents express permission for their child (sic) receive chaplaincy services in a one-on-one basis.*' I do not agree with DET's view of the effect of parental consent. Consent must be fully informed to negate the duty of care. The forms used to give written consent do not outline the risks or describe the isolated environment of the session. In some cases only verbal consent was given with no record of what the parent was informed.

The NSCP funding applications, delegatory powers of the Principals and School Council Chairpersons were examined in addition to funding conditions and agreements. Under DEEWR's Funding Agreement obligations and responsibilities are placed on three parties yet only two of those parties are signatories to the Agreement. Of further concern is that the conduct of Principals and School Council Chairpersons may be considered to be giving effect to a contract (Funding Agreement) for which they do not possess delegated authority.

School Principals were/are required by DEEWR to provide progress reports and to certify that funds under the NSCP are used for the purposes of the NSCP. As neither the schools nor DET receive or control the funds this is not only unreasonable but a risky method of acquitting the grant of funds.

A handwritten signature in black ink, appearing to read 'CAROLYN RICHARDS', written in a cursive style.

CAROLYN RICHARDS
Ombudsman

November 2010

2.0 Recommendations

- 1. One-on-one services provided by the chaplains should be reviewed and measures implemented to ensure the safety and wellbeing of the students. Strong consideration should be given by DET to cease one-on-one services to students given it is difficult to gauge what is taking place within these sessions (DET Executive to refer to Appendix 1).**

DET response:

The provision of one-on-one services by the chaplains will be reviewed. This will be considered in light of relevant factors including risk to students, duty of care considerations, resourcing constraints and confidentiality.

- 2. The role of the Chaplains on the wellbeing team should be reviewed as the chaplains should not be privy to confidential information about students where parental/guardian consent has not been obtained. It is strongly recommended that the chaplains do not participate in the whole of the wellbeing team meetings, they should be called in for segments on the material that extend to the chaplains and ensure all children discussed have provided parental/guardian consent.**

DET response:

To be implemented as per recommendation.

- 3. Consent forms for participation in NSCP should be reviewed and standardised forms be adopted by the schools. The forms should be clear and provide sufficient information outlining what a parent or guardian is consenting to including any risks. If consent is to be obtained for religious activities the form should ensure compliance with the NSCP requirements and consistency with family beliefs.**

DET response:

It is submitted this seems irrelevant to the provision of chaplaincy services which are not religious so query the jurisdictional basis for such a recommendation. The department can review its policies in relation to provision of religious instruction nevertheless if required.

This response is interesting given the findings within the investigation revealed that two schools were conducting religious activities, which were provided by one of the NSCP chaplains under the banner of 'Kids Club'. It should also be noted that one of the schools ceased the religious component of the 'Kids Club' after the commencement of the NSCP whilst the other school continued.

- 4. To ensure student education is the first and foremost priority, chaplains' access to the classrooms should be restricted. Students with parental/guardian permission to attend chaplaincy sessions should be removed from their class to attend the respective sessions which should be conducted in an environment where an adult is able to observe but not hear what occurs. [Note; I have changed this recommendation which in the draft report recommended that a teacher be present at the sessions.]**

DET response to the draft:

There are two potential problems with such an approach. Firstly the provision of chaplaincy services is intended to augment the provision of services in a school. If a teacher has to be present in every session it is likely to place an unworkable staffing and resource burden on schools. Secondly part of the rationale of provision of such services is to allow for a confidential circumstance where a student may feel comfortable to discuss sensitive issues with a chaplain, while they may not feel confident to openly discuss matters in the presence of a teacher. As discusseda solution involving minimum levels of supervision can be explored.

I accept the comments of DET and have changed the original recommendation in reliance on the willingness to find a solution to allow supervision consistent with privacy.

5. DET should consider the employment of an additional full time school counsellor devoted to the rural schools.

DET response:

To be considered as per recommendation.

6. Policies and procedures should be reviewed and a more comprehensive level of detail should be included and extended to:

- a. Reviewing the Berry Springs Risk Management documents for the chaplaincy service and considering adopting this approach and level of detail within the DET Chaplaincy Service Guidelines (refer 12.1.5 of this report);**

DET response:

To be reviewed as per recommendation.

- b. Describing appropriate venues for sessions to be held by chaplains (refer 12.1.5 of this report);**

DET response:

To be described as per recommendation.

- c. The school's record-keeping requirements for chaplaincy services should be prescriptive to avoid any further possibility of non-compliance (refer 12.1.4);**

DET response:

The record keeping requirement of schools in relation to chaplaincy services are to be reviewed with a view to the need for a prescribed set of requirements.

- d. Conflict of interest should be addressed ie. what constitutes a conflict of interest, procedures for handling conflicts of interest and consequences/outcomes (refer 12.1.3);**

DET response:

The department will review as required notwithstanding it is submitted that the issue is irrelevant to the complaint that there is no conflict of interest in the terms as set out in the report.

I accept that DET will review conflict of interest guidelines. There is a conflict between the school wanting to retain chaplains to provide services paid for by the Commonwealth and supplementing the schools resources and the duty of the school to monitor performance, select and if necessary dismiss a chaplain. The tension between these two interests is clear. The defensive response by the schools to complaints and the alienation of parents is a clear example of how partiality and the desire to keep the chaplains caused conflict which was not well managed by the schools.

e. Responsibility of the teachers and chaplains with respect to the safety and wellbeing of the students;

DET response:

The relevant policy and procedure will be reviewed.

f. Annual police clearance checks should be extended to chaplains, volunteers, etc (refer 12.1.1);

DET response:

The operation of the clearance notice provisions of the *Care and Protection of Children Act* (i.e. the ochre card requirement) appears relevant. Commencement of such provisions is anticipated relatively soon. Under that specific child protection legislation, chaplains providing services in schools will be required to obtain such clearance notice bi-annually.....There has been no relevant issue in relation to a failure concerning police checks for the provision of chaplaincy services in the Northern Territory. Nevertheless the issue will be reviewed.

g. Specific complaint handling and dispute resolution should be addressed with respect to chaplaincy services, the role and responsibilities of the chaplains, Principals, teachers, etc;

DET response:

To be reviewed although it is submitted a separate mechanism is not required.

g. (1) I recommend that the first response to a complaint about chaplains be directed at the outset to the DET Executive as the schools have a conflict of interest.

h. Procedures for accessing or removing students from class should be developed (refer 12.1.5);

DET response:

To be reviewed.

i. Processes and procedures for checking qualifications of chaplains, volunteers, etc prior to the delivery of each program;

DET response:

To be reviewed although this appears to be catered for in the current departmental policy.

- j. **Access to student information by chaplains, volunteers, etc, should be descriptive and consistent with the *Information Act* (refer 12.1.4.2);**

DET response:

To be reviewed.

- k. **Guidelines restricting staff and chaplains from unduly influencing parents not to lodge or persist with their complaints or concerns about the chaplaincy service. Parents rights to pursue concerns/complaints through specified channels should be emphasised (refer 12.1.7);**

DET response:

To be reviewed although it hardly appears that parental complaints were limited by the intervention of the chaplains and/or staff.

This response by DET is concerning as it fails to acknowledge that parents have a right to complain and to have their complaint dealt with independently, impartially and respectfully. It ignores the threatened retaliation of boycotting students whose parents complained and phone calls made by Ms Roslyn McMillan to the parents in an attempt to change their minds.

7. **General guidelines should be developed and implemented within the schools on community consultation, surveys and achieving optimum results in addition to the handling of petitions (refer 12.1.9);**

DET response:

Such guidelines could be developed but it is submitted that this would not be a particularly useful exercise. The types of school communities which exist throughout the DET system are extremely diverse such that a guideline for conducting surveys which might be applicable and useful for the community of an urban senior college could be almost totally ineffective for conducting a survey in a remote indigenous school community. The central issue seems to be a criticism that schools did not properly survey the relevant school communities prior to making application for chaplaincy funding to properly effect community consultation and to properly reflect community opinion. In hindsight the problem (if any) does not seem to lie with survey methodology but rather in proceeding on the basis that relevant school councils as representative bodies of school communities can decide issues on behalf of the school communities, in considering that the council view is the community view and in concluding that community consultation was effective by council discussion and decision on the matter. It is clear that councils did discuss the prospect of making such applications for chaplaincy services and accordingly by that process the community was consulted. It is also noted that in some cases, that surveys of parents were also conducted in the process of ascertaining community support. Accordingly the department submits there is no proper reason to create a policy/guideline on conducting surveys and that the utility of such guidelines is questionable.

I am quite disappointed in this response as policies and guidelines should be sufficiently robust to accommodate differences across the schools. The purpose of the guidelines would be to remove uncertainty throughout the schools and enable the Principals to feel confident in their processes and remove any associated stressors. Considering the petitions received by the schools were handled differently and expectations of the Executive were not clear to the Principals DET's rejection of having policy/guidelines

appears to be insufficiently proactive, and ignores the evidence of parents being dissatisfied with the survey process as well as with the school councils' acceptance of them.

- 8. Several of the schools have also engaged the participation of the chaplains within various activities such as sports days, orientation, big breakfast, etc. DET should be reviewing the chaplains participation and determine whether it is necessary for them to be present or whether parent volunteers would be able to provide the same assistance.**

DET response:

It is submitted such participation can be reviewed but the department does not accept that involvement by chaplains in such events is inappropriate and to the contrary can be a positive benefit in the development of a sense of community.

- 9. DET to request DEEWR to review validity of Funding Agreements for each of the schools within the scope of this investigation due to the issue of delegatory authority of the Principals and School Council Chairpersons.**

DET response:

To be reviewed as per the recommendation.

- 10. DET to report identified breaches by chaplains to DEEWR for their consideration.**

DET response:

The department will report breaches by chaplains it identifies to DEEWR for consideration.

- 11. DET to review the conduct of staff and Principals identified within this report where responsibilities have not been met and/or directives/policies have not been complied.**

DET response:

To be reviewed as per the recommendation. The department submits that to a significant extent this recommendation has already been enacted by the department's usual processes.

- 12. Services provided by chaplains to DET staff should be reviewed as Employee Assistance Scheme (EAS) services are available and provide an impartial service.**

DET response

It is not apparent that there was any complaint made by or about DET staff receiving inappropriate chaplaincy services. While EAS provide a professional, impartial and well regarded service, it seems open to adults to speak to a chaplain about. Further, the department is not convinced that there are services provided by chaplains to DET staff which is capable of review.

No complaint was made but staff using chaplaincy services for personal matters may give rise to a conflict of interest. DET should be considering the question – what happens when a teacher, who is confiding all their personal affairs to a chaplain, receives a complaint by a parent about that chaplain, or if a child confides in the chaplain inappropriate behaviour or a personal conflict with a teacher who is or has consulted personally with that chaplain. A conflict of interest is real or **perceived**.

13. A copy of this report to be provided to the Commonwealth Ombudsman for his consideration under the Memorandum of Understanding with my office, to consider the practices of DEEWR with respect to:

- 13.1 The administration by DEEWR of the whole of the National Schools Chaplaincy Program including:**
 - 13.1.1 The manner in which DEEWR monitors compliance with the guidelines of the NSCP.**
 - 13.1.2 Whether or not DEEWR has adequate procedures to ensure acquittal of the funds granted under the NSCP.**
 - 13.1.3 Whether or not DEEWR verifies information provided to it by schools who apply for funding.**
 - 13.1.4 Whether or not the practice of requiring an application for funding to be made by a school, requiring a school to report progress and certify that funds, not received by the schools, have been used only for the NSCP when the school or an education department are not party to the agreement with DEEWR is good public administration.**
 - 13.1.5 Whether or not the investigation by DEEWR into complaints about the chaplains in late 2007 early 2008 was adequate and whether DEEWR has an adequate system for managing complaints about the NSCP.**

I consider eight months from the date of this report to be adequate time within which to implement all recommendations.

3.0 Background

At the beginning of this investigation my office had received several complaints relating to the administration and operation of the National Schools Chaplaincy Programme (NSCP) and chaplaincy services provided prior to the commencement of that programme. The complainants made several attempts to resolve their concerns directly with staff of DET and DEEWR. Responses received by the complainants were considered inadequate because not all of their concerns had been addressed or the responses were not satisfactory.

The parental complaints prompted DET and DEEWR to initiate their own investigations into the administration and operation of the NSCP at the five Northern Territory schools. The programme was suspended during the DET investigation. On completion of the DET investigation by Mr Roger Newman, a Consultant Investigator, a report was provided to DET. Based on his report DET made a determination that the administration and operation of the NSCP was not in breach of any legislative or regulatory requirements. As a result of DET's decision, the programme recommenced. Information received by my office at the time caused me to question the reliability of the report. A Clinical Psychologist complained to this office that his opinion and views were not correctly reported by Mr Roger Newman. The Clinical Psychologist in fact stated that the report misrepresented him as he told Mr Newman that a chaplain had provided services to a child that ought to have only been provided by a psychologist. The report of Mr Newman did not state this.

On receiving complaints from dissatisfied parents, enquiries were made of DET. The first response by DET contained inconsistencies as well as issues that required further clarification. There was conflicting information from DET and the concerned parents about how the chaplaincy service operated and was monitored.

Some of the allegations that prompted this own motion investigation were:

- Counselling was provided by the chaplains without appropriate qualifications
- There was inconsistent administration of the 'opt in' and 'opt out' concept for chaplaincy services across the NT public rural schools
- A student was refused access to the Wellbeing Team because the concerned parent did not want the chaplain to be present during discussions about their child
- A parent suffering cancer made a request for no chaplaincy contact with her children, which was ignored
- There were flaws in the methodology and execution of the DET investigation including:
 - Undertaking interviews in relation to the wrong child
 - A parent who had allegedly raised complaints with DET was not interviewed during the investigation
 - Conclusions drawn were unfounded
 - The opinion of a psychologist had been misrepresented
- There was impropriety with respect to the funding applications and agreement.

EXPLANATION OF TERMS AND SCOPE

Chaplain	A person who provides chaplaincy services in accord with a chaplaincy services agreement ² .
Pastor	A lay person who is commissioned by a Presbytery to provide ministry within a congregation, community or Church based organisation for the purpose of undertaking specified tasks ³ .
DET	Department of Education and Training, Northern Territory formerly known as Department Education, Employment and Training (DEET), and its employees including teachers and Principals.
DEEWR	Commonwealth Department of Education, Employment and Workplace Relations formerly known as the Department of Education, Science and Technology (DEST).
NSCP	National Schools Chaplaincy Programme
Taminmin High School	Now known as Taminmin College
EAS	Employee Assistance Scheme
NAPCAN	National Association for Prevention of Child Abuse and Neglect
ANCOR	Australian National Child Offender Register

RECENT DEVELOPMENT

Since the commencement of this investigation DET has developed and implemented a policy and procedures relating to the school chaplaincy service. These have been considered within the report and comments have been provided.

² Definition provided by Mr Peter Jones, General Secretary - Northern Synod *Uniting Church in Australia*. Mr Peter Jones was asked to elaborate but did not.

³ Definition provided by Mr Peter Jones, General Secretary - Northern Synod *Uniting Church in Australia*. Mr Peter Jones was asked to elaborate but he did not.

4.0 Issues for Investigation

1. The processes and procedures associated with the NSCP and compliance with the schemes guidelines and code by DET.
2. Informed consent and monitoring of consent in relation to services provided under NSCP and pre-NSCP chaplaincy services to students.
3. The reliability and accuracy of the DET investigation report into the provision/delivery of the chaplaincy services programme at Bees Creek Primary School, Berry Springs Primary School, Girraween Primary School, Humpty Doo Primary School and Taminmin High School.
4. Services provided by the chaplain/s to children within Bees Creek Primary School, Berry Springs Primary School, Girraween Primary School, Humpty Doo Primary School and Taminmin High School.
5. The role of the chaplain within the Wellbeing Team and accessibility to this team by students.
6. Funding conditions and agreements, and compliance with these.

5.0 Agency and Jurisdiction

The respective schools in which the chaplaincy service is operated, Berry Springs Primary School, Humpty Doo Primary School, Girraween Primary School, Bees Creek Primary School and Taminmin High School are administered by DET. DET is an agency within the jurisdiction of this office. Services provided by the chaplains to the schools and those provided by the Consultant Investigator also fall within the jurisdiction of this office in accordance with sections 3(3)(d), 14(8) and 14(9) of the *Ombudsman (Northern Territory) Act*. This investigation was undertaken pursuant to sections 14 and 16 of the *Ombudsman (Northern Territory) Act* as at 2008. Section 165(2) *Ombudsman Act 2009* requires any investigation started prior to 1 July 2009 to be completed under the previous legislation *Ombudsman (Northern Territory) Act* as if it had not been repealed.

6.0 Preliminary Enquiries and Investigation

My office made enquiries with the Chief Executive, DET about the issues of complaint. I was unable to conclude that DET's position on some issues was reasonable. The Ombudsman's power to make recommendations derives from the investigations power. I therefore determined to formally investigate the matter and in September 2008 I notified DET, the Minister⁴ and the local members of the Legislative Assembly of my decision, as required under section 19(1) of the *Ombudsman (Northern Territory) Act*. Mr Gerry Wood MLA (Nelson) and Ms Kezia Purick MLA (Goyder) were the local members of the Legislative Assembly advised of the investigation.

⁴ Honourable Marion Scrymgour MLA, Minister for Education and Training.

7.0 Draft Report

This report was sent in draft to DET (including Principals and other staff), the three chaplains, DET Consultant Investigator, DEEWR and the four complainants for comment on 13 May 2010.⁵

There is some information about children and sensitive matters as well as identities of people that were made known only to the Chief Executive of DET.

Each of the recipients was provided with instructions that the draft was confidential and disclosure was prohibited. Comments received by recipients relating to adverse findings about them in the draft investigation report were either noted or included within this final report.

The response received 21 June 2010 from Mr Peter Jones, General Secretary, Northern Synod, The Uniting Church in Australia was on behalf of the three chaplains identified within this report. That response made no reference to the specific adverse comments I have made and was very general.

A further opportunity was provided for the chaplains to be more specific and to make comments or state a defence to the contents of the report. This was not done by the Synod or the chaplains. I note that the chaplains have rejected the report and its recommendations due to their belief that:

- *they have been unduly scrutinised*
- *the report contains many untruths and personal opinions and is a deliberate attempt to discredit the credibility and character of the Chaplains.*

8.0 Sources of Information

- *Ombudsman (Northern Territory) Act 2008*
- *Ombudsman Act 2009*
- *Northern Territory of Australia Education Act*
- *Northern Territory (Self-Government) Act*
- *Care and Protection of Children Act 2007*
- *Northern Territory of Australia Uniting Church in Australia Act*
- Bureau of Statistics
- Correspondence from the Chief Executive DET
- Other documents and websites as referenced in the footnotes of this report

⁵ Although DET's objection to the complainants being provided with a draft of the report was noted, in my discretion I was of the opinion that natural justice would not fully be served if the complainants were not given an opportunity to comment on information they had provided to my office prior to release of the final investigation report.

Interviews were conducted with:

Person interviewed	Status/Position	Date of interview
Mr Stuart McMillan	Pastor/Chaplain	23 July 2009, 12,14 & 21 August 2009
Ms Roslyn McMillan	Pastor/Chaplain	23 July 2009
Mr Jason Purugganan	Chaplain	23 July 2009
Complainant A	Parent and daughter	4 March 2009
Complainant B	Parent	2 March 2009
Complainant C	Parent	2 March 2009
Complainant D	Parent	2 March 2009
Witness A	Parent	21 May 2009 by phone
Witness B	Parent	8 April 2009
Witness C	Parent	1 April 2009
Witness D	Parent	31 March 2009
Witness E	Parent	30 March 2009
Witness F	Parent	27 March 2009
Clinical Psychologist	Child Clinical Psychologist	4 March 2009
Mr Roger Newman	DET engaged Consultant Investigator	27 May 2009
Mr Alan Green	Executive	22 October 2009
Mr Kevin Gillan	Executive	15 October 2009
Ms Maree Garrigan	Executive	21 October 2009
Ms SB	Executive	21 October 2009
Mr RP	Executive for the period questioned about	30 October 2009
Mr Gerry Greene	A/Director Legal Services at the time of interview	4 June 2009
Mr AC	Principal, Taminmin High School	18 August 2009
Ms FH	Principal, Humpty Doo Primary School	17 August 2009
Ms MB	Principal, Girraween Primary School	17 August 2009
Mr JT	Principal, Bees Creek Primary School	17 August 2009
Ms SD	Principal, Berry Springs Primary School	20 August 2009
Ms DW	Assistant Principal, Berry Springs Primary School	12 October 2009
Mr GM	Assistant Principal, Humpty Doo Primary School	20 August 2009
Ms HC	Assistant Principal, Girraween Primary School	5 October 2009
Ms JW	Teacher, Humpty Doo Primary School	13 October 2009
Mr KB	Assistant Principal, Bees Creek Primary School	8 October 2009
Ms MC	Special Education Teacher, Girraween Primary School	15 October 2009
Ms MM	Assistant Principal (Middle), Taminmin High School	21 September 2009
Ms RM	Assistant Principal (Senior), Taminmin High School	21 September 2009

9.0 The Complainants

Several complaints were received from parents whose children attended rural schools operating the chaplaincy service. Through the initial enquiries made by this office it was established that the issues extended beyond those originally raised by the parents and so by the powers bestowed in section 16(1) of the *Ombudsman (Northern Territory) Act*, an own motion investigation was commenced.

9.1 Complainant A – Humpty Doo Primary School and Taminmin High School

Complainant A said that on February 19 2008 a chaplain at her daughter's primary school was alone in a demountable with an approximately seven year old boy. The complainant perceived a risk and so removed her daughters from the school that day as she had no confidence in the school ensuring her children's safety. The complainant told the Principal her children would remain students of the school, however they would remain at home until such time as a written guarantee was provided by the responsible government agency that the chaplain could in no way approach or interact with her children whilst they were at school. The complainant requested a meeting with the Principal to discuss how this could work. At the time of lodging the complaint the complainant had not received such an assurance, and no date had been given for a meeting.

Since the lodgement of this initial complaint various other issues were identified by the complainant in addition to our office receiving additional complaints from other parents.

Further issues raised by Complainant A included allegations that the Chaplains were counselling children within the public schools without being qualified, without parental knowledge and despite parental concerns.

As a result of this initial complaint my office wrote to Ms Margaret Banks, Chief Executive DET on 12 March 2008 and received a response on 26 March 2008. The response advised that due to the complexity of the issues raised the response to the complainant would take some time to complete. On 15 May 2008 the complainant said that steps had been taken by DET and her children had been returned to school. This was a result of the chaplains being suspended as two independent investigations had been initiated by DET and DEEWR. The complainant said that she would wait until the final outcome of these two investigations before pursuing her complaint with my office.

At the conclusion of the two investigations Mr Kevin Gillan in his capacity as Executive Director, Schools North issued a General Findings and Recommendations summary dated April 18, 2008. The summary concluded that the *schools have managed their programs within the DEEWR guidelines* and the recommendations included:

- *That Principals continue to manage the NSCP program and the Chaplains within the DEEWR guidelines*
- *That Principals ensure that their school communities continue to receive up to date information on the chaplaincy activities occurring in their schools*
- *That schools operate the NSCP as an 'opt in' program. Parents are to receive written information in relation to the activities of the NSCP in the school and will be required*

to provide a signed and dated letter of approval for each of their children to participate in the program and organised activities on an annual basis

- *Class and whole school registers of 'opt in' students are to be regularly maintained and adjusted according to new student enrolments and changes in parent approval. Processes must be in place to ensure that Chaplains have up to date access to the registers*
- *As part of their regular quality assurance process General Managers and Regional Directors will monitor that the above recommendations are embedded in their schools.*

The complainant was not satisfied with the investigation outcomes because the respective departments were investigating themselves. The complainant also said that Mr Roger Newman, Consultant Investigator on behalf of DET interviewed the wrong boy during his investigation into the demountable incident. In addition to this the complainant felt quite irate that she had not received a copy or part thereof of the investigation report from DET. The complainant said that when her daughter was interviewed it was recorded without parental permission.

Ms Margaret Banks wrote to the complainant in her role as CE for DET. The letter confirmed and endorsed that there were no breaches by the chaplains of any standards of conduct. Ms Banks stated that Mr Roger Newman:

was engaged to examine a number of issues in relation to the provision of counselling services generally, including particular issues you (Complainant A) raised in your correspondence to the Ombudsman.

The correspondence further stated:

In relation to your assertion that the Principal of Humpty Doo Primary School, Ms FH, advised you that chaplains do, with parental permission, conduct counselling but that it is always supervised by another adult, I observe that there may be some confusion over the use of the term 'counselling'. However a school council meeting on 6 March 2007 held that the school's chaplaincy service was to provide a service that is 'entirely spiritual, supportive and non-denominational'.

School chaplaincy services are an optional service provided by school communities to support existing well-being and pastoral care programs. They are not intended to replace counselling services nor are chaplains permitted to provide professional services for which they are not qualified. However, the nature of the services they provide may in some cases require one-to-one sessions and it is my understanding that parental permission is always provided prior to this occurring..... Commencing immediately, all government schools that offer chaplaincy services will be required to obtain written parental permission, on an annual basis, that confirms a student is permitted to participate in the school's chaplaincy program. Chaplains will not be permitted to provide services to any student who has not obtained this permission.

Complainant A was not satisfied with the response provided by Ms Margaret Banks as it meant the chaplains were still permitted on the school grounds and would have access to the school children. The complainant raised further concerns about Taminmin High School

and the fact that they were using an 'opt out' system. The 'opt out' system meant that students were assumed to have permission to receive chaplaincy services unless their parents opted out by withdrawing their permission. What this in fact meant was that there was no permission obtained for students receiving chaplaincy services. The complainant said that Mr AC, Principal of Taminmin High School indicated that if the chaplains could not access the children under the chaplaincy banner then he would allow them access under the 'volunteer' banner.

The complainant then sought to obtain:

- a definition of 'opt in' from my office
- an explanation about why a written undertaking that the chaplains would not access the complainant's children at school was not given, and
- reassurance that children are not accessed by the chaplains and are excluded from contact by religious bodies.

My office contacted the Legal Services Branch of DET to obtain a definition along with a response to the other information sought. The Legal Services Branch confirmed on 15 August 2008 that a written undertaking had been mailed to the complainant's post box on 1 August 2008. However emails from the complainant requesting such an undertaking from DET dated back to 9 May 2008. Further to this a definition for 'opt in' was provided as follows:

'Opt-in' only services refers to the method of permission required for students in NTG schools to access chaplaincy services. This means that if students are to be involved in chaplaincy services this can only occur with parental permission to confirm the provision of chaplaincy services is allowable. Nevertheless this does not mean the same as a no contact policy, nor is it reasonable to construe that term in such a way. At Taminmin High School, for example, while there must be opt in permission for students to access/participate in chaplaincy services, this does not mean that students may not come into contact with a Chaplain in a number of different ways. For example, the chaplain is part of the school wellbeing team and thus a student could come into contact with the Chaplain as part of the team assisting with a critical incident. Also the Chaplain is permitted to attend at school assemblies and at school events... While such contact may occur it is not contact which requires the provision of 'opt in' permission.

Any contact between non 'opt-in' students and the chaplain in Taminmin High School will not be in the nature of contact for provision of chaplaincy services and will certainly not be contact of a religious/church nature. (The complainant) observed re: Taminmin High School; I now find Principal AC only certain aspects of the program are opt in, thus allowing his chaplains access to the general school population under the remaining aspects of the program... This is clearly not the case and fails to understand the distinction that when the chaplain offers Chaplaincy services there is to be opt in permission but opt in permission is not required where the Chaplain performs a role in the school which is not in the nature of providing chaplaincy services. It is appreciated that the approach which is occurring at Taminmin High School is different to that at Humpty Doo Primary School and that at Humpty Doo the chaplain's role has been agreed to be more

limited. Nevertheless it is also submitted that the approach at Taminmin is not contrary to the 'opt in' policy.

During the assessment of this complaint there appeared to be a few issues requiring further inquiry and as several other complaints were forwarded to my office by concerned parents I merged the matters into an own motion investigation.

9.2 Complainant B - Humpty Doo Primary School

On 21 May 2008 Complainant B contacted my office about the investigation initiated by DET into the chaplaincy service. The complainant's concerns stemmed from the belief that the chaplaincy service had not complied with all guidelines and there was a lack of independence in DET's investigation. The complainant stated that in October 2007:

when this program was first questioned at a school council meeting and the Principal of the school at Humpty Doo Primary School told me in the council meeting that at that meeting was the first time she had ever laid eyes on the guidelines for this program, and the program had been in the school since March 07...How could the guidelines have been followed by DEET staff from March 07 when they had not sighted/read them until they were shown these guidelines in OCT 07.

The complainant was also concerned that misleading information had been incorporated into the National Schools Chaplaincy Program application for funding to the Commonwealth Government and signed by the respective School Principal.

A summary of the primary issues alleged by Complainant B included:

- Humpty Doo Primary School did not run the National Schools Chaplaincy Program in accordance with the respective guidelines as at October 2007
- The investigation report facilitated by DET did not reflect accurate information
- The application seeking National Schools Chaplaincy Program funding was fraudulent.

The complainant believed the program should be cancelled at Humpty Doo Primary School.

My office made some preliminary enquiries and obtained from DET a copy of the investigation report prepared by Mr Roger Newman and a copy of the National Schools Chaplaincy Program Guidelines. Review of the documents raised several questions which were sent to Ms Margaret Banks.

On 18 July 2008 Mr John Hassed, Acting Chief Executive, DET provided the following information:

- The funding agreement commenced at Humpty Doo Primary School on 24 January 2008
- Ms FH became aware of the NSCP guidelines prior to writing the funding application in March 2007
- Consultation with the school community about the NSCP extended to two separate meetings involving two separate elected school councils, ie. 6 February 2007 and 6 March 2007

- Pastor Stuart McMillan was also present at the March meeting to answer any questions
- DEEWR were satisfied with the extent of consultation
- Services provided by chaplains prior to the commencement of the NSCP related to critical incidents and the chaplains had assisted the school community with three student deaths in the last two years
- Pastor Stuart McMillan was a part of the Taminmin High School Wellbeing Team⁶
- *Since 2005 Taminmin, NT DEET, the Local Chaplaincy Committee and Living Waters Church have had a memorandum of understanding which covered the responsibilities of the chaplain working in the school*
- *Members of the wellbeing team will only speak with students after parental permission (typically verbal) is obtained*
- *These discussions are often confidential*
- About the survey conducted by the school the response stated:

The 305 families at the school were all sent a survey on 8 February 2008... Of the 305 families, 66 responded... Of the 66 respondents, 50 were in favour of the NSCP... The survey was conducted after the commencement of the program for the following reasons:

- a. The school council supported the commencement of the NSCP and it was not considered necessary to conduct a survey of the families*
 - b. The strenuous insistence by the complainant and a small group of very vocal parents who argued that the school should conduct a survey...*
 - c. In late 2007, the paedophile issue was controversial in the Humpty Doo community with the Living Waters Church criticised. The school council thought it appropriate to review the chaplaincy program due to this adverse comment and decided to conduct the survey early 2008...*
- On the subject of consent to participate in the chaplaincy service, the response explained:

Prior to 2008 the same system applied but the authority to allow a student to speak to the Chaplain in relation to any issue was verbal from one or both parents. Neither of these systems that we used could be considered as compulsory...
 - *Only one student was seen by the chaplain for a one-on-one pastoral care session after the implementation of the NSCP and in that case a written permission was provided... The chaplain's notes were never put onto a school file or the student record folder so it is unknown whether Pastor McMillan compiled 'a list of children seen.'*
 - On how the chaplains knew which students had 'opted out' the response was:

Essentially that information was provided to Pastor McMillan because of the 'absolutely no contact' request of the parents. For instance, if Pastor McMillan walked past a group of students he could not arguably say hello to the group if the group contained an 'opt out' student. He needed to know who the 'opt out' students were in order for there to be compliance with the parental request... Children in 'opt in'

⁶ The response advised that Taminmin High School wellbeing team consists of a Counsellor, School Home Liaison Officer, School Nurse, Aboriginal and Islander Education Worker and the Chaplain.

programs (i.e. with parental permission) at the school were always removed from classes and the small group working with the chaplain was always supported by a classroom teacher. For the 'Seasons' sessions held in 2007 the chaplain was supported by the school's wellbeing teacher. For any one-on-one pastoral care sessions, these are always held away from the classroom due to the typically sensitive nature of the discussion and to protect the confidentiality of the child and their family. ...Recording information on SAMS was not discussed at the school until May 2008 when it was decided that students 'opting in' would be identified in the SAMS... It would defy logic not to provide that information to the chaplain. How else could the school ensure the parents' absolutely no contact request be adhered to without informing the chaplain that he could not have any contact whatsoever with the specified students? Notwithstanding there would be specified 'opt in' students that he could offer services to, if the chaplain was not advised of the students with which he was to have absolutely no contact, then other than when involved in providing services to opt in students, he could make no contact with any student whatsoever in any form whatsoever. The information of who were 'opt out' students was not distributed widely but on a 'need to know' basis for relevant class teachers and the leadership group.

- *Administration details of NSCP are kept on file. From July 2008, 'opt in' students will be identified in SAMS. What is not kept on file is the nature of discussion between Pastor McMillan and the individuals that see him. As a means of monitoring the program, verbal reports are regularly taken from classroom teachers, parents and the chaplain to indicate whether participation is having positive outcomes. Some parents have expressed the desire that school staff have minimal dealings with the confidential information which is the subject of the chaplaincy service being provided to the student.*

After this response from DET, further areas required clarification and additional information. During the assessment of this complaint several other complaints were forwarded to my office by concerned parents and so I merged the matters into the investigation.

I received more information on 11 September 2008 from Ms Margaret Banks which became part of the investigation.

9.3 Complainant C - Humpty Doo Primary School

Complainant C contacted my office on 18 August 2008 about her concerns over the previous year. In February 2008 she had involved DET as she felt she was getting nowhere with Humpty Doo Primary School. The complainant's issues were two pronged, firstly she said that a simple request for her son's session notes with the chaplain took 10 weeks to obtain and involved the General Manager Schools – PARCS⁷. These notes were requested from Ms FH, Principal Humpty Doo Primary School on several occasions⁸ in June 2008 as the child

⁷ Email dated 8 August 2008 from Mr TM, Chairperson Humpty Doo Primary School Council to Ms Maree Garrigan seeking notes on behalf of the complainant, extract from email: *As the Chair of the Humpty Doo Primary School Council, I believe the handling of this most sensitive issue may well determine the future conduct of the NSCP at Humpty Doo Primary School. As you will be aware, a number of very vocal parents..... continue to question the legitimacy of the NSCP, and in view of the previous paucity of consultation with school councils, this belligerence appears to be spreading. I would be concerned at the loss of what has the potential to prove to be a highly successful surveillance program for at risk children, over a matter which can, and should, be addressed quite simply.....*

⁸ Email dated 3 June 2008 from complainant to Ms FH requesting child X's file from the chaplains (email acknowledges there was a previous request). Email acknowledged by Ms FH in an email dated 7 June 2008.

psychologist treating the complainant's son had required them. An earlier email dated 7 March 2008 addressed to Mr Kevin Gillan, acknowledged Ms FH's refusal to provide the requested information on the basis that the information shared between the chaplain and child X was confidential.

A meeting was held on 8 August 2008 with Ms Maree Garrigan, the complainant, the child psychologist and Mr Stuart McMillan to discuss the complainant's concerns⁹. The complainant was eventually provided with 5 pages of drawings¹⁰ and one page of notes prepared by Mr Stuart McMillan which briefly detailed sessions with her son. The notes recorded that Mr Stuart McMillan had been using the Room 14 – A Social Language Program¹¹ and was perceived by the child psychologist as stepping over professional boundaries.

The second prong of the complainant's concerns asked the chaplain's qualifications to be able to provide the Room 14 program and his ability to use the program given the complainant's lack of prior knowledge about the program and lack of informed consent. The complainant said that Mr Stuart McMillan had left one of the school counsellors with the impression that her son did not need to be referred to a professional. In the complainant's email to Ms Maree Garrigan, General Manager Schools – PARCS on 12 August 2008, the complainant was seeking verification that Mr Stuart McMillan had operated within the NSCP guidelines.

The complainant forwarded a further email on 19 August 2008 to Ms Maree Garrigan, Mr Chris Sheedy¹² and others in relation to the details obtained about the Room 14 program and following up a response with Ms Garrigan in relation to her earlier emails. Ms Garrigan responded by email on 19 August 2008 advising *Room 14 is a resource that can be used by anyone, including parents, to assist students in developing social skills. We will continue to work and liaise with Student Services in relation to suitable programs for supporting students in developing such skills.* In a further email by the complainant dated 19 August 2008 she sought to confirm that she still wanted the following questions answered:

1. *Is this program approved for use within Northern Territory Schools?*
2. *Does the deliverance of this program fall within the NSCP guidelines?*
3. *Is this program allowed to be delivered to students without consultation and or parental consent?*

Further email dated 17 June 2008 to Ms FH and copied to Ms Noelene McCormick following up on child X's file. Email dated 23 June 2008 by Ms FH to the complainant provided requested dates of sessions between the chaplain and child X. Email dated 23 June 2008 by complainant to Ms FH then requested a time to meet with the chaplain regarding notes held by the chaplain. Email dated 23 June 2008 from Ms FH to the complainant advised a meeting could be arranged when the chaplaincy program had been reinstated and all parties had returned from leave. As a result the complainant forwarded an email to Mr Kevin Gillan, Executive Director Schools North questioning Ms FH's response and explaining the request for the notes had come from the child psychologist.

⁹ There were no formal minutes recorded for this meeting, however the child psychologist had recorded his own notes of the meeting, details are provided later in the report under section 12.4.1.

¹⁰ Email dated 19 June 2008 from Ms Noelene McCormick to the complainant advising *NSCP doesn't require files to be kept on students and I have been assured that no additional information is kept at Humpty Doo School. It is possible however that the chaplain kept diary notes of his interactions with child X but you will need to confirm that with him....* Email from complainant to Maree Garrigan dated 8 August 2008 *it would appear in child X's case that Stuart does have diary notes and paperwork (drawings etc)..... I would appreciate it being suggested to Stuart that he make this paperwork available.*

¹¹ Developed by Carolyn C. Wilson and published through LinguSystems.

¹² State Manager, South Australia, Australian Government DEEWR.

The complainant's email dated 19 August 2008 stated that Mr Stuart McMillan represented himself as providing parenting programs through NAPCAN when qualifying himself for the parenting advice provided in the Chaplaincy Chat.¹³ The complainant said she had made enquiries with NAPCAN¹⁴ and was unable to confirm Mr Stuart McMillan's representations.

On 19 August 2008 the complainant sent to my office an email dated 11 April 2008 addressed to Mr Chris Sheedy¹⁵ which provided the following background information:

My son child X is a year 5 student at Humpty Doo Primary, last year (year 4) he started to get bullied, I approached his teacher on several occasions to see if there was a problem and was dismissed that there were no problems and child X just needed to be a little more resilient.

The bullying persisted and again I questioned what was happening, also letting his teacher know that the method she was using in the classroom for bully reporting was not working for X. She had a method of 'put it in writing' this would be great if all 9 year old boys were articulate enough to put their feelings and emotions in writing. There was no way child X could have successfully used this method when he was already so distraught about the bullying he had sustained at lunchtime. Hence you can see the pattern here of where everything went wrong.

In August 07 this situation ended up escalating, child X felt so hopeless resulting in him threatening to bring a knife to school and stab another student so he would be dead and then he would stop. This threat was screamed to the other child in front of two teachers and about 50 students.

I was devastated; I could not believe child X was in such a bad way, I approached the Principal to set up a meeting to organize some help for child X. I wrote a huge letter letting them know what had been happening and requesting assistance for child X. During the meeting both myself and my husband let the school know that we felt that child X would benefit from seeing a school councillor (sic). I couldn't believe it when they said they had a guy named Stuart McMillan who worked with the school and he just happened to be at school that day and was brought into the meeting to be introduced to us.

When we saw Stuart I was aware we knew him outside of school, I was aware he was the pastor on the Uniting Church. I made mention that we did not want religion addressed with child X. I was told by the Vice Principal Mr. GM that no religion would be addressed and that Stuart was very professional being able to

¹³ Section of the Humpty Doo Primary School newsletter.

¹⁴ Emails dated 18 and 19 August 2008 – support communications with NAPCAN.

¹⁵ Mr Chris Sheedy's response dated 20 August 2008 stated:

.....The NSCP does not prescribe specific activities that a chaplain can or cannot undertake while undertaking the role of chaplain. Each chaplain, must, however, sign a Code of Conduct. The Code of Conduct covers behaviours and aspects of the chaplain's role and indicates the standards expected of the chaplain in delivering services funded under the program. The Department believes that school principals, schools and their communities are best placed to determine if Room 14, or any other program, would be of benefit to their students. It is a matter for the principal and local school community to make judgements on such matters. The complainant in an email dated 20 August 2008 sought further information from Mr Chris Sheedy in relation to parental consent and establishing who was responsible for monitoring breaches of the Chaplains Code of Conduct.

separate the two roles being his role within the school and his role within the church.

I agreed to Stuart seeing child X, given the situation I believed Stuart to be the school councillor (sic), who else would you refer a child to that has threatened another students life.

Stuart would see child X on a regular (weekly) basis calling child X out of class and they would have a chat and Stuart would read a book and child X would have to let Stuart know what feelings and emotions were raised. He also suggested that child X draw a picture of his feelings at home as a little bit of homework and he could bring it to the next meeting. I think he suggested that next time child X got angry he could try counting to 10, (child X told me he thought this was lame, when he was out of control the last thing he could think about doing was counting to 10). Child X also said that at times he would be with Stuart alone in a closed door situation, a matter the school strongly denies.

Weather to (sic) door was open or closed now seems highly irrelevant, given that I have a lot bigger concern to be raised.

Everything seemed to be moving quite slowly, X didn't seem to be any more settled and was still showing signs of aggression and anxiety. I had not had any feedback from Stuart and we were starting to ask around about private counsellors available in the community. It was then in November that I found out that the Uniting Church was housing a pedophile in our community, it was also then that I realized that Stuart had no qualifications to be counselling child X.

I immediately put a No Contact form on both my children's files preventing the chaplains being able to access them. I was scared like the majority of the community that the chaplains at school could be so off handed with our children's safety. I am a strong believer that the majority of pedophiles are unable to be rehabilitated; it is not if they will re-offend it is when they will re-offend.

I can fully appreciate that the church has a place for them in their community; I can even understand that they may try to offer assistance in rehabilitation or a cure. It is their belief that the pedophile housed in our community was of no danger as the church had cured him of his illness.

This brings me to my next concern if a child they were offering 'pastoral care' to, gave any indication that they were being sexually abused at home would they:

- a. Inform relevant authorities, or*
- b. Approach the family to 'cure' the perpetrator, hence helping the child and believing they had acted just as their faith instructs them too. I believe some people of strong faith/religion believe they are bound and reportable to God foremost.*

We have taken child X to our GP who immediately referred him to a child psychologist and discussed with him the situation. He was horrified, firstly that the school could abuse the services offered by the Chaplaincy program in this way and

second that Stuart offered a level of 'Therapy' to child X that he is completely unqualified to offer.

I mentioned to Roger Newman that child X had been seen by a child psychologist who agreed in his professional opinion that child X's situation called for a referral to Student Services who would have been able to organize appropriate care for him. Roger was quite interested in child X's psychologist point of view on this matter and also went on to have a meeting with him, reporting his findings also.

As you can imagine they were along the lines of anger and astonishment that the chaplains would overstep their boundaries in offering unqualified therapy to school students. He also went on to say that if Stuart had been a councillor (sic) or psychologist his actions would have been enough to have him struck off the register.

This program has been extremely detrimental to our family. While I can not say that the therapy offered by Stuart harmed child X in anyway the fact that it prolonged him being referred to a qualified councillor (sic) is devastating alone. Child X could have been well on the way to recovery/understating with strategies put in place and appropriate coping skills acquired. What if child X had of carried out his threat of violence not receiving the help he needed, who would have been responsible for that?

In child X's case I would rather have been told that they did not have school councillors (sic) available but could offer Stuart for 'pastoral care' if I like. This would have left me to make an informed choice.

After receiving *General Findings and Recommendations* from Mr Kevin Gillan, DET Executive Director following Mr Roger Newman's report the complainant wanted to know when chaplains took over a class, where did children without NSCP permission go.

On 6 March 2008 the complainant had met with Ms FH, Ms CE¹⁶ and Ms CF¹⁷. The complainant said during this meeting she was told a school counsellor was not available to provide services to child X at that time. While the complainant discussed the bullying child X experienced, the complainant identified her and child X had met with the Assistant Principal, Mr GM, to go through student photos on the computer system. Although considered a trivial point by the complainant her concerns were raised when Ms FH denied this would have ever happened. The week following the meeting 10 March 2008 the complainant emailed Mr GM and expressed her concerns about Ms FH's denial and sought confirmation that the process did occur. On 14 March 2008 Mr GM responded by requesting any correspondence relating to *this issue* be directed to Mr Kevin Gillan as the Executive Director. Mr Kevin Gillan responded on 16 March 2008 by recognising the complainant's concern was a school based issue and referring the email to the General Manager PARCS.

Following correspondence forwarded by the complainant to the Minister for Employment, Education and Training, the Honourable Marion Scrymgour MLA, a response dated 6 May 2008 was received. The response was premised on the advice provided by DET, which stated satisfaction with the findings of the external investigation and found that *the school and Pastor McMillan acted appropriately in this matter*. Further to this the complainant received

¹⁶ Assistant Principal at the time.

¹⁷ DET Student Services.

an email dated 29 August 2008 from schoolchaplaincy@deewr.gov.au advising that DET was best placed to work with the complainant to address the suitability of individual reference materials. The email stated:

It is the responsibility of the schools to make decisions about particular resources used in schools, and issues regarding parental consent. This is consistent with the School Principal's overall responsibility for student welfare and for communication with, and responsiveness to, the school community. Under the NSCP the School Principal and the funding recipient must take all reasonable steps to ensure that school chaplains comply with the Code of Conduct..... If there is an actual or perceived breach of the Code of Conduct, the school chaplain must cease providing chaplaincy services. The funding recipient is required to notify the Department if it becomes aware of such a situation. In such circumstances, school chaplains must not continue to provide any services under the Program unless the Department gives its written agreement for the chaplaincy services to continue.

In response to DEEWR on 8 September 2008 the complainant wrote advising an own motion investigation had been commenced by my office and asked, should this not qualify to suspend the chaplaincy programme. On 9 September 2008 Mr Chris Sheedy, State Manager, South Australia, DEEWR responded that the investigation undertaken by his department was concluded and a decision was made not to take any action in relation to suspending the school chaplaincy services at that stage. The email acknowledged DEEWR would fully cooperate with any investigation undertaken by my office.

In an email from the complainant dated 9 September 2008 addressed to Ms Eva Lawler, DET, concerns were raised in relation to a three year advance payment of NSCP funds to the Uniting Church. It was claimed that minutes of the Girraween School Council meeting in 2007 identified this advance payment of \$60,000.

Each of the concerns raised by the complainant have been considered within this report as part of the investigation.

9.4 Complainant D – Berry Springs Primary School and Taminmin High School

On 28 September 2007 the NSCP funding became effective at Berry Springs Primary School. On 11 October 2007 complainant D met with the School Principal, Ms SD and the Assistant School Principal at the time, Ms HB, demanding no contact with the chaplains for her two children. This was then confirmed in writing to DET on 16 October 2007. On this day the complainant addressed a similar letter to Ms Roslyn McMillan, school chaplain and handed it to Mr Stuart McMillan telling him '*consider it addressed to himself as well.*' On 17 October 2007 the complainant received a letter from the chaplains with no acknowledgement of her demands within the letter. The letter included a statement which the complainant said was false. The complainant said the Kids Club was being run from the library by Ms Roslyn McMillan alone and the complainant's son had been receiving religious instruction on a regular basis without her permission. The complainant said that this religious instruction was opposing her own beliefs and those she had taught her children.

On 30 October 2007 the complainant's two children attended orientation day at Taminmin High School. Whilst there one of her children was placed in a group led by Mr Stuart McMillan even after the complainant's no contact order. On the same day the two chaplains Mr Stuart McMillan and Ms Roslyn McMillan approached the complainant's two children, an

act the complainant considers to be *a blatant misconduct*. As a result the complainant wrote to Mr AC, Principal Taminmin High School to insist on no contact between the chaplains and her children, information the complainant expected to have been passed on prior to the orientation day. The complainant said she attended the Berry Springs Primary School Council with her concerns; however, felt they did not take her seriously as they had not *viewed the guidelines*.

Correspondence dated 14 November 2007 addressed to the Chairperson Berry Springs Primary School Council from *Stuart and Ros McMillan* and signed by Ms Roslyn McMillan was provided to this office by the complainant. The letter read as follows:

Provision of Chaplaincy Services

We are aware of yet another attempt to discredit the chaplaincy service that is currently being delivered at Berry Springs Primary School. This is very disappointing, & so we feel it is necessary to clearly state our position:

- 1. The School Council at its last meeting endorsed the provision of the service by Living Water Chaplaincy Services, with Ros McMillan as the Chaplain. This decision was not made lightly, but with input from DEET and with careful, logical consideration. Challenging their decision challenges the integrity of the members of the Council.*
- 2. The service that we provide is professional. The suggestion that we would act in an unprofessional manner is scurrilous and defamatory. Our commitment to the wellbeing of children and enhancement of community capacity has been, and continues to be, one of our foundational principles.*
- 3. The small group of people who seek to undermine the delivery and effectiveness of the chaplaincy service are basing their arguments on selected information, assumptions and half-truths, and are ignoring many of the facts. We are open to dialogue.*
- 4. There are five key aspects to the chaplaincy service we deliver, detailed in a document given to the Principal. Given desperate need for additional resource people in rural schools, the destructive actions of this small group are disadvantaging the children and community of Berry Springs.*

We urge you to consider the wellbeing of Berry Springs school community by upholding the decision made at the last School Council meeting, and confidently proceed with the chaplaincy service offered by Living Water Chaplaincy Services.

We are happy to answer any further questions.

Stuart and Ros McMillan

In 2008, both of the complainant's children commenced at Taminmin High School. The complainant felt that at no stage was any substantial information provided to the school community to constitute broad consultation about the programme. The complainant said she was refused a hardcopy newsletter by Taminmin High School, which was a request made due to the complainant not having email access.

The complainant raised her NSCP concerns with Mr AC, Principal Taminmin High School at the commencement of 2008. The complainant said that Mr AC told her if the NSCP providers entered her children's classes then her children should take the matter into their own hands. Her children should leave the classroom and go sit in the office to ensure compliance with the complainant's no contact order. The complainant stated that she expressed her dissatisfaction with this but was provided with no other options. On 25 February 2008 the complainant said that this situation did arise as her daughter was required to leave her health class and sit unsupervised in the office until the class was over. The complainant felt quite distressed that a chaplain had more right to be in her child's class than her child who was there to be educated.

On 28 February 2008 the complainant said she made a verbal complaint to DET through Ms Linda Dawson, Director School Operations as the complainant said her written complaints had not been acknowledged. After several calls she received a verbal response which did not sufficiently address her concerns. The complainant then sought a response in writing. The written response by Ms Linda Dawson was dated 12 March 2008 and acknowledged the chaplains were not employed as teachers or as departmental employees and duty of care for the class remained with the teacher. It was also stated that as part of the chaplains' role they assisted with activities in the games room at lunchtimes and during recess, and at lunchtime they were present in some areas of the school yard. The response stated that a police clearance had been obtained for the chaplains and there was no information communicated to Taminmin High School about the no contact order for her children. Ms Linda Dawson also noted that in future Taminmin High School would liaise with the primary schools to ensure this type of information was communicated.

The complainant said she raised her concerns in relation to the NSCP with the Taminmin High School Council, in which she believed they had little interest and proceeded to endorse the programme without having seen the guidelines. The complainant said that when she asked the council members about the NSCP guidelines no one knew what she was talking about.

In June 2008 the complainant was diagnosed with breast cancer and so she approached Mr AC as Principal of Taminmin High School to discuss her diagnosis. It was intended that Mr AC advise the children's teachers and the wellbeing team of this situation so they could offer support if required. The complainant said that when she confirmed her no contact order with the Principal, he did not agree with her concerns but would follow her wishes. This would be achieved by ensuring her family's situation was not discussed at the wellbeing team meetings due to the presence of the NSCP providers. This assurance created more concern for the complainant as she believed the team that existed to assist children for these specific times would not be available to her children. The complainant also raised with my office an objection to the NSCP providers attending all wellbeing team meetings and discussing private information about students with no parental consent.

10.0 The Witnesses

After the investigation by my office began, several other parents were identified as having concerns.

10.1 Witness A - Bees Creek Primary School

I received a copy of an email dated 20 March 2008 sent to the Minister for Employment, Education and Training, the Honourable Marion Scrymgour MLA. The parts relevant to the investigation were:

1. ...
2. *The chaplain at my children's school, Bees Creek is being used for behaviour management on a regular basis and was used in this way to counsel my son and several boys whom I had complained were bullying him. My permission for this was neither sought nor given.*
3. ...
4. *The Living Waters Uniting Church saw fit to run a residential rehabilitation program for a convicted pedophile in the middle of a school and community precinct at Humpty Doo and did not think that this compromised children's safety or the man's rehabilitation prospects.*
5. *The pastor of the Living Waters Uniting church lied on at least two points over this debacle in a phone conversation I had with her this week (and was forced to admit one lie)... She is counselling at schools.*
6. ...
7. *Anecdotally some of her other comments regarding the complainants and their motivation are horrifying, being that 'only someone who had been sexually abused themselves would bother to complain' (about the pedophile being the community hall caretakers house), that most people are not that bothered by paedophiles...*
8. *She believes that she was in the right in housing this man opposite the main rural school bus interchange and that if only those complaining mothers had not found out, everything would have been all right. She claims to have had police approval for this.*

The witness was interviewed by phone. She said that her son was being bullied at school and so he had been referred by the Principal to Mr Jason Purugganan, chaplain at the school. The witness was not sure whether her son received one-on-one sessions or whether he attended group sessions.

The witness said she contacted Ms Roslyn McMillan to discuss her concerns about the paedophile living at the Meeting Place and working as a caretaker. The witness said that Ms Roslyn McMillan initially denied the situation, however when the witness challenged this Ms

McMillan defended the situation. The witness said that the chaplain did not feel she had done anything wrong with the paedophile and the rehabilitation program being run and stated *'if these mothers hadn't found out about it, it would all be alright.'*

The witness's view is that services for behaviour management should be provided by qualified counsellors.

10.2 Witness B - Bees Creek Primary School Council Member 2007-2009

Witness B had children in Taminmin High School and Bees Creek Primary School. The witness met with Mr JT, Principal Bees Creek Primary School to discuss her disapproval of the chaplaincy programme. In addition to this a letter was forwarded to the Principal stating that her children should not be involved in *'any shape or form'* the chaplaincy programme.

The witness's daughter recounted her day to her mother each day after school. On one particular day, which cannot be recalled, her daughter told her that she had joined a chess club. The witness later found that the chess club was operated by the chaplaincy service. The witness said they raised this concern with the Principal and was made to feel *'it was all my fault that my child didn't have knowledge that she wasn't allowed in the chess club and that it was now my problem to tell her that she was no longer allowed to do this chess club thing.'* The witness said that her daughter was allowed to walk into the chess club without any permission.

The witness also said her close friend's son who attended Bees Creek Primary School was spoken to privately by the chaplain without a teacher present. The close friend did not want to be identified as her son was currently dealing with enough, however the witness said that she had signed a *'no contact'* letter.

The witness raised another concern and said there were two sisters fighting at Berry Springs Primary School:

as siblings do, when Ros McMillan pulled them aside, spoke to them and started asking weird questions about who comes to your house, where do you guys sleep, what does mum and dad do, and don't worry about telling mum about this. And the girls being good girls and rural girls do go home and tell mum...

One of the primary concerns of this witness was the fact that a paedophile was being accommodated by the chaplains in the middle of a school and community area. The witness was one of the parents that attended a group meeting with other parents and Mr Stuart McMillan. The meeting was held at the Rise, Uniting Church Living Waters site. The witness felt that the concerns raised by the parents about the close proximity of the housing for the convicted paedophile were not taken seriously. The witness said that when one of the parents asked what Mr Stuart McMillan would do if he was presented with a similar situation of housing a paedophile in the same proximity, he replied he would do the same as he had not done anything wrong.

The witness had been a member of the Bees Creek Primary School Council when the Council approved the NSCP. She said that there was only one school council meeting before it was signed off. At that meeting the chaplaincy programmes to be introduced were discussed by Mr Stuart McMillan, however, the witness claims there was no vote taken amongst the committee members.

10.3 Witness C - Girraween Primary School Council Member 2007-2008

This witness's children were previously at Girraween Primary School, however were removed and placed into another school due to parental concerns. The concerns stemmed from the chaplains' close proximity to the witness's children and the witness feeling her concerns were being ignored.

The witness had extreme concerns about the paedophile being housed at the Meeting Place on the Living Waters site in Humpty Doo. As a result the witness commenced a petition at the school collecting names of other parents *'who wouldn't approve of the particular chaplain...running our chaplaincy program at school.'* The witness further stated that when she had the petition in her hands and was at a school assembly, Ms Roslyn McMillan was also in attendance at the assembly. The witness said she approached Ms Roslyn McMillan and told her she was not happy with her or her husband having anything to do with the witness's children. Ms Roslyn McMillan then asked the witness to talk about her concerns, so the two met at the church and spoke for two and one half hours. The witness was keen to establish why the chaplains had accommodated a convicted paedophile in the close proximity of a school and community area. The response received by the witness was that it was a matter of convenience. The Meeting Place needed a caretaker and the convicted paedophile needed a job and the chaplains felt this was the type of situation that would keep the convicted paedophile away from the children. The witness said she pointed out to Ms Roslyn McMillan that the area of choice included three schools, a childcare centre, and a park across the road, about which Ms Roslyn McMillan did not seem concerned.

The witness said that Ms Roslyn McMillan told her *'the only reason you have an issue with this is because you must have been sexually abused as a child.'* The witness was highly offended by this. The witness said that the Meeting Place was used as emergency accommodation by parents with children and the caretaker would be considered a safe person by the children. She was concerned about that.

The witness said that the convicted paedophile was using the Taminmin High School Library during school hours. This was something told to her and denied by the chaplains. The witness said that Ms Roslyn McMillan told her that the chaplains didn't have much to do with the convicted paedophile's day to day affairs, but his wife who was also accommodated at the Meeting Place would be looking after his best interests. The witness said *'I don't blame him because he is a sick man, I blame them because they made the decision to put him there and disregarded the fact that the kids were all around him...'*

The witness said she continued with the petition and obtained a page of signatures which were presented to a School Council meeting. She said that as Ms Roslyn McMillan and Ms MB, Principal Girraween Primary School became aware of the petition a spokeswoman for the chaplaincy service also attended that particular council meeting. The witness always attended fifteen minutes into the meetings due to family responsibilities. She said that when she entered the meeting the chaplaincy spokeswoman had just completed her spiel. This led the witness to feel intimidated as she felt all eyes were on her and *'how dare she try and stop this.'* The witness said she tried to explain to the school council that she didn't want to stop the program but was scrutinising the Uniting Church at Humpty Doo. She said that she brought out the NSCP guidelines and emphasised to the council there should be a demonstrated need for the programme.

The witness said that Ms Roslyn McMillan attended a school council meeting and introduced herself as Ros. At that meeting Ms Roslyn McMillan asked the council members about their awareness of government funding for a chaplaincy program. According to the witness Ms Roslyn McMillan told the Council that the government funding basically pays for someone like her to attend the school as a chaplain. *'it was simply stated the government were funding it, we could do it, thank you very much. And then she left.'*¹⁸

The witness recalled that the school council felt it was a great idea simply because there would be an extra person to assist. The witness said that the requirement for demonstrated need and community consultation were not taken on board as the school council could obtain the funded program at no cost. The witness said she suggested that the council send out a letter to the families however she said this was quashed and the view was *'why would we bother sending out pamphlets when nobody responds to them and we already give out a lot of pieces of paper to everybody.'* The Principal of Girraween Primary School, Ms MB, was present at the school council meeting. The witness said that Ms MB did not address the witness's concerns. The witness originally seconded the proposal to introduce the program but at the next meeting when she raised her concerns about the McMillans' as chaplains no-one was willing to listen.

In an earlier meeting with Ms MB, Principal, the witness said she was told that providing a chaplaincy service to the school and the same chaplains accommodating a convicted paedophile were two separate issues. The witness felt the chaplains' decision to place a convicted paedophile surrounded by children reflected badly on their ability to make decisions in the children's best interests. The witness felt these chaplains were not suitable to provide the chaplaincy service at the schools.

The witness also said once the chaplaincy program commenced *'if anybody had an issue that they thought that they needed to go to the chaplain they could just walk by... If the teacher thought that a child would have an issue then they would be able to get... referred to by the teacher. Or, of course, if the office was having issues with a particular child they may be, ... could go to the chaplain. It was, ... another thing that I brought to everybody's attention is that they weren't actually trained counsellors, they were purely there for an ear, not to guide them on anything.'* The witness said that she queried why we don't have a trained counsellor if there was a need for troubled students as there was only one available through Taminmin High School with a long waiting list. The witness said that the council suggested it was too hard to gain the services of a qualified person and it would be easy to *'have Ros or Stuart or Jason'*.

Another incident related by the witness was after school when her daughter discussed what she had done for the day. The daughter referred to a Mr P in her class that day helping her with her reading. The witness established that Mr P was Mr Jason Purugganan, chaplain. This occurred after she had submitted her letter of *'no contact.'* The witness then addressed this with her daughter's teacher who was new to the school. The teacher had no awareness of the *'no contact'* letter. The witness then went to Ms MB, Principal. She said that the Principal apologised but did not explain why this incident had occurred. The witness then put her concerns to Mr Jason Purugganan, chaplain. When the witness approached the chaplain he pulled out a slip of paper with the names of children with whom he was to have no contact and replied *'oh, yes she is on my list.'* The witness queried why he had gone in the classroom with her daughter present. The chaplain went on to explain that he needed to be introduced to the classroom so the students were aware he was a safe person. The witness

¹⁸ Quote by witness C during her interview with my office.

was outraged and responded *'that's exactly what I didn't want for my daughter ... to think you are a safe person. You're probably a very nice person....The decisions that you guys make putting that paedophile there have made me reallyoutraged and I'm not wanting you to make any decisions on my behalf regarding my child.'* The witness said she knew of another child who was in the class when Mr Jason Purugganan was assisting with the reading, whose mother had also submitted a *'no contact'* letter.

The witness said there was no information or newsletter to parents advising them that the chess club was being run by the chaplains.

The witness said she would see Ms Roslyn McMillan at the school on days not allocated to provide her services. The witness and her children had other contact outside of the school with Ms Roslyn McMillan whilst shopping (Target) even though she said Ms Roslyn McMillan was aware of the *'no contact'* letter. Ms Roslyn McMillan does not recall this incident. She did not deny it and said that her intention would have been to communicate with the mother and not the children.

Eventually the witness removed her children from the school as she felt she could not affect the comings and goings of the chaplains and their contact with her children. She said that she did not disclose to the Principal her true reasons for removing her children but now wished she had.

10.4 Witness D - Berry Springs Primary School Council Member 2006-2008

The witness's children attended Berry Springs Primary School but were removed and placed elsewhere. The reason for moving the children was a perceived culture of bullying within the school. The way the school handled parents' concerns relating to the chaplaincy service was frightening to the witness. The witness said that the chaplaincy programme was discussed at several school council meetings, the first in December 2006. The witness recalled the way that the program was described *'it was offered up as a counselling service...if there was a very dramatic incidence...grief counselling was something that came up.'*

The witness said that at one of the school council meetings it was said *'we really don't know what parents think'* so the witness suggested *'why don't we ask them'*. The witness said that Ms SD, Principal, thought it would be alright for her to get a list of parents who were either opposed or supportive. The witness then sought to obtain names of parents who opposed the chaplaincy programme. The witness said that the spiel she provided to the parents on obtaining their signature was *'I said were they aware there was a chaplaincy program starting in the school and were they aware of the people who were running it, and....were they aware that those people were also running a rehabilitation program for paedophiles in the rural area.'* The witness stated she did not coerce any parent into signing. The witness said that when she went to present her list to the school council they were not interested. Even though another council member spoke out about the programme, the remainder of the council voted for the programme. The witness reiterated she did not have a problem with the programme only the people proposed to run it. The witness said the council did not accept her list. The council then surveyed the school community.

The witness recalled one of the parents (complainant D) attending a school council meeting to put forward her concerns about the chaplaincy service. The witness recalled that the council treated the parent quite rudely, didn't listen to her and gave her a hard time even though she presented well thought out ideas and concerns.

10.5 Witness E

The witness's children do not attend the schools within the scope of this investigation¹⁹. The witness attended the meeting held with parents and Mr Stuart McMillan to discuss concerns about the convicted paedophile being housed so closely to the schools and community area. There were approximately fifteen parents in attendance.

The witness said that when the concerns were put to Mr Stuart McMillan at the meeting he went into defensive mode by defending what he had done and defending the convicted paedophile in particular. The witness said Mr Stuart McMillan initially denied the convicted paedophile had *'those previous problems. He also denied that he had been convicted of them. He denied even that he was there at that point.'*

The witness told my Investigation Officer one of the parents produced a court transcript at the meeting. She said Mr Stuart McMillan was surprised and said the transcript *'was absolute rubbish.'* According to the witness Mr Stuart McMillan called Justice Riley a liar. The witness said Mr Stuart McMillan told the group *'that this is not the first time that they have brought somebody of this capacity²⁰ into the community and it certainly won't be the last.'* The witness said that parents asked how the chaplains were treating the convicted paedophile; Mr Stuart McMillan responded *'by hands on healing'* described as *'where they all stood around this habitual offender and put their hands on him and prayed for him.'* The witness said that Mr Stuart McMillan tried to convince parents that the convicted paedophile was a safe person around children. The witness told the Principal of St Francis of Assisi about the registered paedophile living nearby, and in response a six foot fence between the Meeting Place and the school was erected.

The witness said that the information provided in the applications for NSCP funding prepared by the Principals of the schools was incorrect. The witness said that a claim was made by the Principals that there were many public housing units in the area. On counting them she said there were a total of four.

The witness said she saw Mr Stuart McMillan take the said offender onto the school grounds around September/October 2007. When asked how she came to know that it was the offender with Mr Stuart McMillan the witness responded *'We all knew it was M....N..... It's a small community.'*

The witness said that several parents had removed their children from Humpty Doo Primary School and placed them into St Francis of Assisi as a result of the chaplaincy programme. The witness was aware of this as she greeted them on their commencement at the new school.

¹⁹ The witness's children attend St Francis of Assisi, which is located next door to the Meeting Place, the location at which the convicted paedophile was being housed.

²⁰ Witness defined this as a habitual sexual offender.

10.6 Witness F - Berry Springs Primary School Council for 3 months

The witness's children attended Berry Springs Primary School, but were removed and placed into the Essington School as a result of concerns about the chaplaincy programme. The witness said that the 'school' did not want to listen to parental concerns about the programme and the chaplains. The witness said '*Petitions were done, surveys were done and even the last survey that the school did, the majority was against, even though there was an even number in the amount of children affected. I questioned the Principal about this and she said, well, we've decided to go for it because the school council felt that the program was needed.*

In an email dated 4 March 2008 to the witness from Ms Noelene McCormick²¹ it was acknowledged that the witness had provided written notification that her children were not to have contact with the chaplain at Berry Springs School. The email further stated that the names of the witness's children would be placed on the '*no contact list*', a copy of which was given to the school chaplain Ros McMillan. The witness said she was not aware nor did she provide permission for her children's names to be placed on a '*no contact*' list and be provided to the chaplain. The witness's expectations were that the names of her children be provided to the relevant teachers so they could ensure no contact. When asked further during her interview with my office the witness accepted that she thought the chaplain might see her children's names so she would know not to have contact, however she did not expect a phone call from the chaplain, Ms Roslyn McMillan. The witness recounted:

It was the morning that I did give the school, [a 'no contact' direction] or I sent it with my boy, to give to the school, and it would have been within two hours I got a call from Ros McMillan, the chaplain. Now I'm trying to remember exactly what she said. It was, I believe you do not wish your children to have contact or be on the non contact list...I was quite shocked because my initial thought was, the school has given my telephone number to the chaplain without my permission and I rang the Education Department wanting to know what my rights were and that's when they looked into it and someone from the Education Department rang me and said that she, the school did not give the telephone number, Ros McMillan had it and I said, how can she have my telephone number.

What had happened was, over a year ago...I received a volunteers award for a play group that I'd set up at the ... Now I had received a phone call, which I didn't know it was Ros then...I received a phone call saying, you have been nominated for a volunteers award...so I accepted it...Now Ros McMillan's reason for contacting me (at home with respect to the 'no contact'), feeling that she had the right because we had some sort of relationship because she gave me the award...I said we had absolutely no relationship...But still, even if we did have a relationship, that still did not give her the right to ring me at home to want to discuss why my children are on the non contact list...what is she doing with my phone number in her diary a year later...you don't cart diaries around with you for two years and then within a couple of hours, oh I know that name, oh I gave her an award last year – looking up my telephone number...it was just a bit suspicious...I can't prove it, I think the school did give my number.

The witness said that following the call from Roslyn McMillan, the School Council Chairperson contacted a friend of the witness. The contact was to establish whether the

²¹ Acting General Manager Palmerston Rural, DET (previously Department of Employment, Education and Training)

witness was 'approachable' to discuss the chaplaincy programme. The witness could not recall the name of the Chairperson. As a result of the attempted contact the witness immediately emailed Ms SD, Principal, with her concerns.

The witness said that she had been a school council member in earlier years and believed it was around the end of 2007 perhaps that the chaplains' services were discussed. The witness said that in 2008 she found out about the National Schools Chaplaincy Programme. Prior to this the witness' understanding was from the Principal saying 'it's that due to these reasons, being, you know, a suicide in the community, we would like to be able to have Ros McMillan here to maybe offer some support.'

The witness said that another parent's son had attended the kids club held during lunch time. The child opened the door and asked 'what's going on here, do we need permission' and the response from the chaplain was 'yes, but you come on in anyway.' No further details as to the child were provided by the witness.

The witness raised objection to the demographic details provided within the NSCP application and said it was an inaccurate reflection of the community.

The witness concluded by saying 'although there are other schools in the area but they've all got the chaplaincy program, all the rural government schools, they've got the same chaplain in every school, so we chose a school that has no denomination, no religion whatsoever, no chaplains, so that has come to us having to drive into town every day to educate my kids...'

10.7 Signed statement dated 27 October 2007

This statement was provided to my office by one of the complainants on 8 September 2008. The exact origin of this document is unknown. The contents were put to Mr Stuart McMillan and Ms Roslyn McMillan.

To whom it may concern,

I am AA who was carer for BB. BB was taken to a funeral by a Mrs Roslyn McMillian with out my consent. Mrs McMillian took BB to the location site where BB's friend committed suicide. On another Mrs McMillian was handing out literature at a funeral BB attended. BB and I feel that this is totally inappropriate. BB also received counselling by Mrs McMillian in this session Mrs McMillian criticised my self and in BB's words said some very bad things but BB was to distraught to elaborate. Since the counselling she has become suicidal, had to seek professional help and consequentially had to move out of the area.....

Signed

Both Mr Stuart McMillan and Ms Roslyn McMillan informed my investigator that BB was living with them at the time as they had known her since she was three and that the described events did not occur as part of the chaplaincy services.

10.8 Signed statement dated 17 November 2007

This statement was provided to my office by one of the complainants on 8 September 2008.

The exact origin of this document is unknown.

To whom it may concern,

My family and I stayed at the uniting church accommodation known as The Meeting Place. I have grave concerns about the uniting church and their pastors Mr and Mrs McMillian.

The church failed to inform me the caretaker of the Emergency accommodation was a repeat offender pedophile. The caretaker visited my family regularly while we were staying at the emergency accommodation. Mrs McMillian counselled one of my children criticizing her mother leaving the child very upset. Our children go to Humpty Doo Primary School where Mr McMillian has questioned the child without our consent. I find the uniting church and the McMillians behaviour very inappropriate.

Yours sincerely

Signed

Ms McMillan advised that at one point there was a family with six children residing in the larger unit of the emergency accommodation. Ms McMillan advised that she attempted to move this family on as they had been there for quite some time and were offered a house elsewhere which they refused. Ms McMillan also advised that she was concerned about Mr MN²² taking up residence with the family still residing there given they had six children. Ms McMillan advised that she was not sure when the family found out about Mr MN's background and believes she did not inform the family due to confidentiality reasons. However Ms McMillan said she was aware the family knew of Mr MN's background.

My investigator did not pursue these statements further after receiving the explanations.

11.0 The Student Population

The schools considered within the scope of this investigation included the following:

1. Taminmin High School
2. Humpty Doo Primary School
3. Bees Creek Primary School
4. Berry Springs Primary School
5. Girraween Primary School

Berry Springs Primary School, located 60km south of Darwin, commenced operation in September 1977 and has grown from a small one-teacher school to a major primary school in the Palmerston and Rural area.²³ As at August 2008 there were 232 enrolments accommodating preschool to Year 6.²⁴ Girraween Primary School had 308 enrolments at that time.²⁵ Humpty Doo Primary School had 469 enrolments.²⁶ Bees Creek Primary School had

²² Convicted paedophile.

²³ <http://www.schools.nt.edu.au/berryspringsschool/ourschool.html>

²⁴ <http://www.directory.deet.nt.gov.au/SchoolProfile.aspx?asset=00087&childAsset=00087>

²⁵ <http://www.directory.deet.nt.gov.au/SchoolProfile.aspx?name=Girraween%20Primary%20School>

²⁶ <http://www.directory.deet.nt.gov.au/SchoolProfile.aspx?name=Humpty%20Doo%20Primary%20School>

344 enrolments.²⁷ The children within the primary schools would primarily go up to the age of 12.

As at August 2008 Taminmin High School had 1058 enrolments.²⁸ The school is located in close proximity to Humpty Doo Primary School and is approximately 40 kilometres south of Darwin city. The school was established in 1983 and acts as the feeder school for the above named primary schools. The facility accommodates students in years 7 to 12 also offering VET courses.²⁹ The middle school is made up of approximately 600 students within years 7 to 9³⁰ (approx 13 to 15 years of age). Taminmin Community Library is situated in the grounds of Taminmin High School and services the students, staff and parents of Taminmin High School and all residents of the local Rural Area.³¹

²⁷ <http://www.directory.deet.nt.gov.au/SchoolProfile.aspx?name=Bees%20Creek%20Primary%20School>

²⁸ <http://www.directory.deet.nt.gov.au/SchoolProfile.aspx?name=Taminmin%20College>

²⁹ <http://www.taminmin.nt.edu.au/>

³⁰ Transcript of interview with Ms MM on 21 September 2009.

³¹ <http://www.taminmin.nt.edu.au/Middle/MSParentInformation.html>

12.0 Results of Issues Investigated

Issue 1. The processes and procedures associated with the NSCP and compliance with the applicable instruments, guidelines and code by DET

When the NSCP commenced in schools Commonwealth government guidelines became applicable and compliance compulsory. Following the commencement of the programme and in particular the DET investigation conducted by Mr Roger Newman, directives, policy and procedures were developed and implemented by DET. In assessing compliance of processes and procedures all legislative and regulatory instruments were reviewed.

A chaplaincy/pastoral service was in place at most of the schools prior to the introduction of the NSCP and the instruments regulating the pastoral/chaplaincy services at the time were considered by this investigation.

Prior to the NSCP commencing *Guidelines for Chaplaincies in Northern Territory Government Schools* dated November 2004 had been promulgated by DET. In addition to these guidelines a Memorandum of Understanding (MOU) had been entered into between the *Local Chaplaincy Committee, Living Waters Uniting Church* and the *Principal of Taminmin High School*. The MOU was premised on the 2004 Guidelines which stated '*We, the parties to the Memorandum of Understanding, are familiar with the Guidelines for Chaplaincies in Northern Territory Government Schools and agree to work in association with..... to provide a chaplaincy service in keeping with the stated principles and policies of these documents.*'

On commencement of the NSCP from late 2007 through to early 2008, processes and procedures had not been established within the various rural schools. This was said to be because the schools had limited time due to the rushed implementation of the NSCP. The Principals were predominantly reliant on the NSCP guidelines for direction, including the Chaplains Code of Conduct. The NSCP funding agreement also placed conditions on the funding recipient; however each of the Commonwealth instruments relied on certain issues to be dealt with at a local level and were not sufficiently prescriptive for the schools or chaplains.

In discussions with the Principals it was established that many of the school practices initially adopted for the operation of the NSCP were not documented and were oral only. As a result of parental concerns and following the investigation report prepared by Mr Roger Newman, Mr Kevin Gillan, Executive Director prepared and issued to the Rural School Principals³² *General Findings and Recommendations* dated 18 April 2008. The recommendations included:

- *that Principals continue to manage the NSCP program and the Chaplains within DEEWR guidelines.*
- *that Principals ensure that their school communities continue to receive up to date information on the chaplaincy activities occurring in their schools.*
- *that schools operate the NSCP as an 'opt in' program. Parents are to receive written information in relation to the activities of the NSCP in the school and will be required to*

³² The rural school principals included all schools within the scope of this investigation.

provide a signed and dated letter of approval for each of their children to participate in the program and organised activities on an annual basis.

- *Class and whole school registers of ‘opt in’ students are to be regularly maintained and adjusted according to new student enrolments and changes in parent approval. Processes must be in place to ensure that Chaplains have up to date access to the registers.*
- *As part of their regular quality assurance process General Managers and Regional Directors will monitor that the above recommendations are embedded in their schools.*

Although the Recommendations set some parameters there was still insufficient detail about administering the NSCP. An attempt to remedy this was made by DET developing and implementing policy, guidelines and deed of agreement relating to the chaplaincy services on or around 2009 and 2010.

The following sections consider the various processes and procedures adopted in relation to the chaplaincy service.

12.1.1 Police clearance checks

In establishing the requirements associated with police clearance checks the funding application signed by the School Principals³³ stated:

I agree to:

- *Keep copies of all documentation relevant to my application, and provide these to DEST if required. I understand this includes...**records of Australian Federal Police and working with children checks***
- *Notify DEST immediately in writing following an adverse **result of an Australian Federal Police or working with children check...***

In addition to the above, the Funding Agreement stipulated at paragraph C.17:

*You must ensure that all school chaplains have a **current Australian Federal Police (AFP) criminal history check...** These checks must be renewed every two (2) years from the date of the initial check.*

Each of the chaplains’ police clearance checks from when they started providing services to the schools were reviewed with the following information established.

Chaplain	Date of commencement*	Dates of police clearances	
Jason Purugganan	16 October 2007	30 October 2007	23 November 2009
Roslyn McMillan	2004	23 November 2007	19 November 2009
Stuart McMillan	2004	30 October 2007	24 November 2009

* Commencement of any chaplaincy/pastoral care services including pre-NSCP to the schools within the scope of investigation including critical incidents and bereavement support.

The police clearances obtained in 2007 and 2009 by the chaplains and accepted by the School Principals are Northern Territory Police clearances nationwide and NOT Australian

³³ Of the schools within the scope of this investigation.

Federal Police clearances. As there is no requirement to provide the Commonwealth Department with a copy of the clearance unless there is an adverse finding this discrepancy would not have been evident to the Commonwealth. Without further deliberation on any differences between the two clearances, I am concerned that the clearance obtained by the chaplains and accepted by the Principals was not through the stipulated police agency, the Australian Federal Police. This discrepancy is a matter for DET to consider.

I am satisfied that a sufficient clearance was obtained by two of the chaplains prior to entering into the schools; Nationwide check with fingerprints and included spent convictions. The exception being Mr Jason Purugganan, which has been discussed further in the next paragraph. The Funding Agreement paragraph C.17 as noted above also required the checks to be renewed every two years, which became due in October and November 2009 for the respective chaplains. As is demonstrated in the table above this requirement was complied with by each of the chaplains.

Mr Jason Purugganan commenced working on 16 October 2007³⁴ as a chaplain within Bees Creek Primary School; however he did not obtain a police clearance until two weeks later. In questioning Mr JT, Principal Bees Creek Primary School about Mr Jason Purugganan's criminal history check he stated *He's also a trained and registered teacher in the NT and of other schools and I've viewed those qualifications..... He had an NT Teacher Registration Card. I also checked with the NT Registration Board, TRB, so I knew he was a qualified teacher and that he would have had a police check with that as well.* According to Mr Jason Purugganan's resume he commenced his teaching in Australia May 2003 at the Elliott Community Education Centre. On my office conducting a search with the Teachers Registration Board Mr Jason Purugganan's registration was confirmed and listed as expiring in 31 December 2011.

Prior to the commencement of the NSCP, services were being provided to some of the schools³⁵ by Mr Stuart McMillan and Ms Roslyn McMillan. A fact that is not in dispute by any of the parties. Chaplaincy services were being provided to:

1. Taminmin High School in 2004 onwards where Mr Stuart McMillan initially provided an ad hoc service with respect to *critical incident, additional support, some suicides and things that had happened.* The Principal at the time invited the chaplains to have a more formal relationship and so *From the third term of 2004 Mr Stuart McMillan was in that school two days a week on a voluntary basis with the title of Pastoral Care Worker* and from the fourth term Ms Roslyn McMillan joined the school.³⁶ The chaplains then formed part of the wellbeing team within Taminmin High School.
2. *Humpty Doo was critical incidents, the chaplains were involved in working with that school over those critical incidents, they had several deaths but two that were quite close together. And had been a long ongoing relationship with that school. And I think it was 2000 and, in 2006 Mr Stuart McMillan did a day a week in Humpty Doo voluntarily and then in 2007 it went to two days a week voluntary until the chaplaincy program started.*

³⁴ Confirmed by Mr Jason Purugganan's 2007 notes, verified as true by Mr Stuart McMillan.

³⁵ The only school within the scope of the investigation not utilising the chaplaincy services prior to the NSCP was Bees Creek Primary School.

³⁶ Details from interview conducted by my office with Mr Stuart McMillan.

3. Berry Springs Primary School in 2004 onwards where Ms Roslyn McMillan conducted the Kids Club³⁷
4. Girraween Primary School in 2004 onwards where Ms Roslyn McMillan conducted the Kids Club³⁸.

Ms Roslyn McMillan was a registered teacher³⁹ and on my office conducting a search of the teacher register Ms Roslyn McMillan's registration was listed to expire 31 December 2010. In an interview with my office, Ms Roslyn McMillan revealed she commenced teaching in 1986 and was required to obtain a police clearance at that point for her initial registration. However between 1986 and 2007 Ms Roslyn McMillan believed she had not obtained any further police clearances.

Mr Stuart McMillan told my Investigation Officer that he had obtained a police clearance check in either late 2004 or early 2005.

Mr AC, Principal Taminmin High School told my office he commenced as Principal in January 2006 and confirmed the chaplains commenced providing services to the school prior to this. He said *I assumed like all other members of staff that they had been checked. Certainly I made procedures in place for checking all new staffcriminal history checks. Now we have a requirement to make sure we get them checked each year, but we didn't back then.* At the time of Mr AC's commencement in 2006 there were no legislative requirements for people working with children to undertake police clearances other than under the *Teachers Registration Act*.⁴⁰ In examining all policies listed on the DET website⁴¹ as at 9 February 2010, there were no specific policies relating to police clearances. I found this quite disturbing given the nature of the Department. However DET in response to the draft investigation report stated:

The department submits that Police Checks were introduced in 1997 and that the department has since that time always maintained a policy on that matter, although the document has been published in a variety of forms – including content in HR manuals and policy documents. The current document... notes the Effective Date of that version as August 2008, indicates it was reviewed on 1 April 2009 and that the next review date was 1 January 2010. It is possible the policy could have been taken down for review at the precise time when the office of the Ombudsman conducted its search on the existence of such policy.

However, with respect to the chaplains there was a requirement under the *Guidelines for Chaplaincies in Northern Territory Government Schools* dated November 2004. DET's response to the draft report however claimed that the 2004 guidelines were withdrawn. No date was provided of that withdrawal. This is discussed further under 12.1.2 of this report.

Mr AC confirmed his awareness of the Memorandum of Understanding signed in December 2005, expiring 31 December 2006, which was premised on the *Guidelines for Chaplaincies in*

³⁷ Information provided by Ms Ros McMillan during her interview with my office.

³⁸ Information provided by Ms Ros McMillan during her interview with my office.

³⁹ Supporting documentation provided by Ms Ros McMillan.

⁴⁰ It should be noted that since 2006 the *Care and Protection of Children Act 2009* has been enacted.

⁴¹ <http://www.det.nt.gov.au/about-us/policies/all-policies>

*Northern Territory Government Schools 2004*⁴². The Memorandum of Understanding was the contractual arrangement between Taminmin High School, Local Chaplaincy Committee and the Living Waters Uniting Church setting out the terms and conditions of the chaplaincy services. It acknowledged and pledged to abide by the 2004 Guidelines. The Guidelines, paragraph 5.3 stipulated *The selected Chaplain must undergo a Northern Territory Police Criminal History check...prior to final appointment being confirmed.*

As part of the investigation Ms FH, Principal Humpty Doo Primary School was interviewed. She said that prior to the NSCP commencing she was using Mr Stuart McMillan for pastoral care for the students. She said *It was under an agreement that, because we're a primary school we don't have the same person, we don't have home liaison, we don't have a counsellor, we don't have a school nurse and the Taminmin wellbeing team comprised all those people and the chaplain, and the primary schools access it through the secondary school so that happens in all the different areas*⁴³. The Agreement referred to by Ms FH was the Taminmin High School Memorandum of Understanding, which was subtitled *Chaplaincy Service of Taminmin High School.*

12.1.2 Memorandum of Understanding (MOU)/2004 Guidelines for Chaplaincies in Northern Territory Government Schools

Prior to the commencement of the NSCP these two documents, MOU and 2004 Guidelines were the legal and policy framework for the provision of chaplaincy services.

The Memorandum of Understanding was a template included in the *Guidelines for Chaplaincies in Northern Territory Government Schools November 2004* by DET. The Memorandum of Understanding contained the following sections:

- Responsibilities of the Local Chaplaincy Committee
- Responsibilities of the Principal
- Responsibilities of the Employing Agency
- Performance Appraisal, and
- Resolution of Disputes.

The definitions as referred in the MOU were found in the *Guidelines for Chaplaincies in Northern Territory Government Schools* as follows:

2.2 Local Chaplaincy Committee

*Refers to the body approved by the School Council, and established in conjunction with Christian Churches and societies recognised by the NTCC*⁴⁴, concerned to support a Chaplain in that school.

2.3 Employing Agency

Refers to the organisation, distinct from the Local Chaplaincy Committee, with whom the Chaplain's contract of employment is made. This will normally be a local church or

⁴² The Agreement was effective 9 December 2005 and signed by Mr Kim Rowe, Principal of Taminmin High School at the time; Mr Robbo Robinson, Chairperson of the Local Chaplaincy Committee; and Mr John Derrington, Chairperson Living Waters Uniting Church.

⁴³ Interview conducted by my office with Ms FH on 17 August 2009.

⁴⁴ Northern Territory Council of Churches.

denomination or para-church organisation that has been approved by the NTCC to act in this capacity.

The responsibilities listed in the Memorandum of Understanding relating to the Principal included:

1. *ensuring the school community is represented on the LCC⁴⁵*
2. *the allocation of working space and support facilities for use by the Chaplain*
3. *ensuring the LCC is aware of relevant and current Department of Employment, Education and Training policies and how they relate to the operation of the Chaplaincy Program in the school*
4. *development of procedures for access to the Chaplain by students, teachers, parents and other relevant persons*
5. *communicating procedures for the referral to other people and agencies, both within and outside the school*
6. *oversight the general functioning of the Chaplain in the school and especially in matters relating to school administration and procedures, and*
7. *notwithstanding compliance with all appropriate legislation, referral of any disciplinary issues to the LCC.*

The only school to enter into a Memorandum of Understanding was Taminmin High School, which was effective from 9 December 2005 and concluded 31 December 2006. Mr AC, Principal Taminmin High School was aware of the Memorandum of Understanding when he commenced as Principal around January 2006. During his interview with my office, Mr AC was asked about the gap between the Memorandum of Understanding ending December 2006 and the NSCP commencing in May 2008. Mr AC explained that there was no additional instrument to cover the gap, it was implied that the Memorandum of Understanding would continue after its expiry date. Continuation had not been discussed with the chaplains. The MOU's last sentence on the first page states *A decision to continue the chaplaincy service into the following year will be made on or before the 30 November 2006.* As is listed above part of the responsibilities of the Principal within the Memorandum of Understanding extended to ***oversight the general functioning of the Chaplain in the school and especially in matters relating to school administration and procedures.*** There was clearly a failure to comply with the MOU but I do not consider it significant as all parties continued to act as if the agreement was still on foot.

Although there was only one school to enter into a Memorandum of Understanding with respect to chaplaincy services prior to the NSCP, there were three other schools⁴⁶ utilising the services of the chaplains. Ms Roslyn McMillan told my Investigation Officer that she had been providing services to Berry Springs Primary School and Girraween Primary School since 2004. These two schools offered a Kids Club during lunch times. The services provided within these clubs will be discussed further under Issue 4 Services provided by the Chaplain/s.

Mr Stuart McMillan told my Investigation Officer he had provided services to Humpty Doo Primary School prior to the commencement of the NSCP. Ms FH, Principal Humpty Doo Primary School said she believed she was accessing the chaplain through the Taminmin High

⁴⁵ Local Chaplaincy Committee.

⁴⁶ Humpty Doo Primary School, Berry Springs Primary School and Girraween Primary School.

School Wellbeing Team therefore assuming the respective *Agreement*⁴⁷ applied. Ms FH said that in 2005⁴⁸ the Taminmin High School Principal introduced Mr Stuart McMillan as part of the wellbeing team. Mr Stuart McMillan however said *there was no MOU or sign off or anything in terms of Humpty Doo; it was just an agreed service*. He said that he provided a chaplaincy service to Humpty Doo Primary School one day per week in 2006 and two days per week in 2007. Ms FH confirmed pastoral care, which extended to one-on-one sessions with the students and critical incidents assistance, was provided prior to the NSCP.

Section 4 of the Guidelines is titled ***Establishing Chaplaincy Services in a School***. The requirements for establishing such a service are clearly set out and include:

- Measuring Local Support
- Financial Support
- Forming a Local Chaplaincy Committee
- Management within a School

Paragraph 4.3.2 emphasises that *The Principal, however, is ultimately responsible for all services*⁴⁹ ***operating within the school***. Section 5 of the Guidelines outlines the steps for ***Appointing a Chaplain***, which requires the position to be advertised.

In view of Mr Stuart McMillan's comments above, ***it was just an agreed service***, I find it unsatisfactory that a School Principal could allow a service to commence within her school and promote it to parents, when there was no administrative documentation outlining the rights and obligations of the chaplains, school, parents or students. The failure to advertise the service and allow other pastors or chaplains to express an interest was also poor practice and a breach of the DET Guidelines as well as contrary to procurement processes for Northern Territory government agencies.

Ms SD, Principal Berry Springs Primary School and Ms MB, Principal Girraween Primary School during their interview with my office confirmed they did not have a Memorandum of Understanding in place for Ms Roslyn McMillan's chaplaincy services. The services provided by Ms Roslyn McMillan prior to the NSCP appeared to be confined to the Kids Club lunch time activities as a form of religious instruction. Both clubs were developed through the historical religious instruction provided to the schools under section 73 of the *Education Act*. The club consisted of religious type activities⁵⁰ provided within a classroom setting during the lunch time session. Both Principals' confirmed there were no one-on-one sessions between the chaplain and students *prior to the commencement of the NSCP*.

The response provided to the draft investigation report by DET highlighted Mr Gerry Greene claiming, during his interview with my office, that the *Guidelines for Chaplaincies in Northern Territory Government Schools November 2004* had been withdrawn due to their potentially discriminatory nature. The transcript of Mr Gerry Greene's interview was checked. He had said he was unsure which document had been withdrawn at the time and was unable to provide a date of withdrawal, either at interview or in response to the draft investigation report. His exact words were:

⁴⁷ Memorandum of Understanding.

⁴⁸ Prior to the commencement of Mr AC, current Principal Taminmin High School.

⁴⁹ Chaplaincy services.

⁵⁰ At the time of interview was Acting Director Legal Services, DET

*...and in fact I think the policy was subsequently withdrawn on the basis of our advice, so I don't know whether this is that document or whether it's something else.*⁵¹

If the 2004 Guidelines were withdrawn, this would mean there were no guidelines in place from the time of withdrawal to the commencement of the NSCP. From when the 2004 guidelines were withdrawn highly sensitive information being imparted to the chaplains and their conduct would not have been subject to any guidelines, standards or accountability particularly so as the chaplains were not employees of the Northern Territory Government.

12.1.3 Conflict of interest/Duty of Care

The Funding Agreement between the Commonwealth and the chaplaincy providers stipulates under Clause 17, if during the term of the Agreement, a conflict arises, or is likely to arise the chaplaincy provider must:

- Immediately notify the Commonwealth in writing of that conflict;
- Make full disclosure to the Commonwealth of all relevant information relating to that conflict; and
- Provide the Commonwealth with steps or proposed steps taken or to be taken to resolve or otherwise deal with the conflict.

Clause 26. *Interpretation* of the Funding Agreement defined 'conflict' as *a conflict of interest, or risk of a conflict of interest, or an apparent conflict of interest arising through You (chaplaincy service provider) engaging in any activity or obtaining any interest that is likely to interfere with or restrict You in providing the Project to Us fairly and independently.* Project was further defined as that listed under Item C of Schedule 1, which included details of services to be provided to students within the recipient schools.⁵²

Following concerns raised by parents from the various schools about a perceived conflict of interest due to the school chaplains, Stuart and Roslyn McMillan:

- accommodating a registered paedophile within close proximity of the schools at which the chaplains provided a service to the students; and
- operating a rehabilitation program for paedophiles within close proximity of the schools at which the chaplains provided a service to the students;

the following questions were considered:

1. Was there a conflict of interest in the school chaplains' alleged external activities and the provision of a service to the schools?

⁵¹ Quote from Mr Gerry Greene at interview with my office during investigation.

⁵² The DET response to the draft investigation suggested that the conflict of interest referred in clause 26 of the Funding Agreement relates only to a commercial conflict of interest, which interferes with the provision of services fairly and independently. I reject this notion as it is clearly stated that the conflict relates to **any activity...that is likely to interfere with...**the provision of the project (services). Although, it should be noted that the DET response did indicate that *the department took the view that the two roles of chaplaincy provider to the schools and paedophile rehabilitator were inconsistent and incompatible and communicated to chaplains as soon as the department became aware of the issue...*

2. Was there a breach in duty of care by the school chaplains, the School Principals or DET? *Duty of care with respect to services provided within the chaplaincy service has been considered under Issue 4 Services provided by the chaplain/s.*

It has been established through several witnesses that when they asked Ms Roslyn McMillan and/or Mr Stuart McMillan individually or in the parental group meeting about the paedophile, they were met with denials. It was understandable that for confidentiality reasons the McMillan's may have been reluctant to reveal any details, particularly as at the time there were no legislative or regulatory requirements to make such disclosures about paedophiles to the community.

In order to decide if the two chaplains had a conflict of interest or a risk compromising their duty of care to children at the schools a close analysis of all the circumstances is required.

12.1.3.1 Information about person on the Sex Offender Register

For the purposes of this report, I will refer to the convicted paedophile as Mr MN. The transcripts for the most recent matter against Mr MN heard before the Supreme Court⁵³ in 2004 were considered. During that hearing it was established that Mr MN had offended against children in the 1970's and 1980's and was later convicted of carnal knowledge and 11 counts of indecent assault in 1992. In 1991 Mr MN pleaded guilty to four counts of indecent assault and in 2004 pleaded guilty to five counts of sexual misconduct with children between 2003 and 2004.

Mr MN was under the care of a psychiatrist from around 1990 to the middle of 1998. This psychiatrist (Dr G) diagnosed Mr MN as suffering from heterosexual paedophilia, which was confirmed by another psychiatrist (Dr W). Justice Riley during the hearing stated:

The information available to me is that the condition from which you suffer is something with which you have to live and is not capable of being cured. The condition has to be managed in a way that prevents you from acting upon the impulses that you experience. You have sought to do that with some success over a lengthy period of time. Unfortunately, for all concerned, you lapsed. Justice Riley went on to summarise Mr MN's consultation with the psychiatrist (Dr W) You told him you had been battling thoughts for the whole of your life and that you had adopted various strategies to avoid being alone with children.

It was recognised by Justice Riley that due to certain personal issues encountered by Mr MN his vigilance failed him and he commenced re-offending in 2003. It was acknowledged by Dr W during the hearing that paedophiles are notorious recidivists⁵⁴; however Mr MN displayed a high level of motivation to rehabilitate. Although, it was further acknowledged that this **same level of motivation was displayed back in the 1990's, prior to re-offending.** The Clinical Psychologist stated during the hearing that he would be implementing a strategy to reduce the risk of re-offending although he observed that relapse prevention was a life-long and continuous task of vigilance for Mr MN.

Evidence provided by Mr MN's wife suggested *the two of them would obtain employment in situations where children are not involved.* Justice Riley concluded to Mr MN:

The consequences of your offending for your victims are likely to be serious and ongoing. They are certainly unpredictable. It is necessary that the courts do what

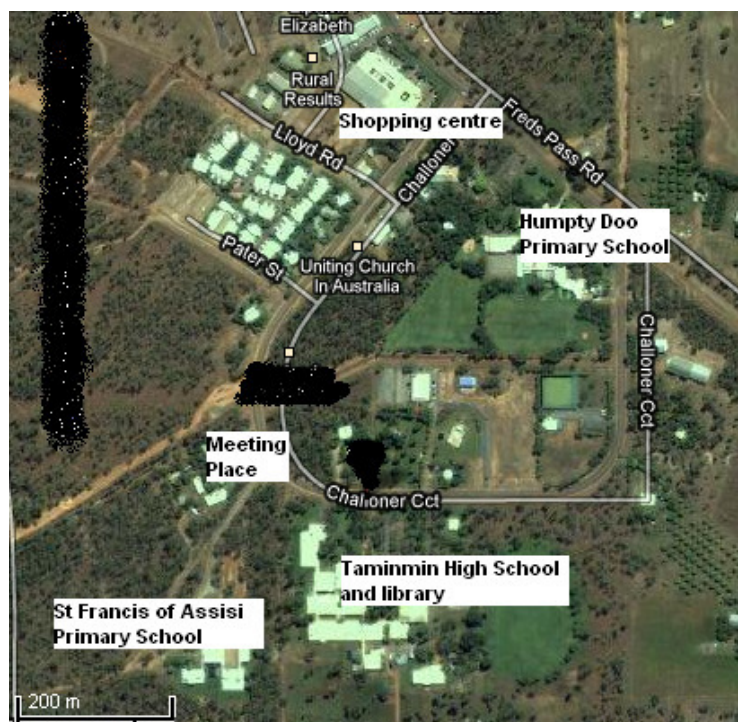
⁵³ Of the Northern Territory, 21 October 2004 before Justice Riley.

⁵⁴ Repeat offenders.

they can to protect children from people such as yourself and to deter both you and people like you from offending in this way.

Evidence obtained from ANCOR records and through the admission of Ms Roslyn McMillan confirmed that Mr MN was accommodated at the Meeting Place and worked there as a volunteer caretaker with a key to each of the rooms and buildings⁵⁵. The Meeting Place is a refuge in Humpty Doo for persons in need, including families with children. This particular fact is concerning, however is outside of my jurisdiction and will not be considered further in this report other than to mention that the enactment of the *Care and Protection of Children Act* now prohibits employment⁵⁶ of convicted paedophiles within refuges.

In order to assess the risk to the students the close proximity of the Meeting Place to Humpty Doo Primary School, Taminmin High School and the after school activities undertaken by these students should be considered. Below is a map displaying the Meeting Place, showing the schools within a short walking distance.



Accepting the evidence in the court transcripts dated 21 October 2004 before Justice Riley and seeing the close proximity of where Mr MN was living, the risk to the students and risk of a relapse on impulse to Mr MN were evident.

In a letter dated 22 November 2007 to Complainant B from Mr Chris Sheedy,⁵⁷ he said that the department was:

working in close conjunction with the Northern Territory Department of Education, the Principal of Humpty Doo Primary School and other schools in the region to address the issues Complainant B had raised. The Northern Territory Department of Education, the Principal of Humpty Doo Primary School and the School Council are satisfied that the chaplain at Humpty Doo has ended his church based counselling relationship with the convicted paedophile. The chaplain has made a number of

⁵⁵ As advised by Ms Ros McMillan during her interview with my office.

⁵⁶ Employment includes engagement in a volunteer capacity sections 185(2)(e), 185(5)(a)(iii) and 189(1).

⁵⁷ South Australia State Manager, Department of Education, Science and Training (now known as the DEEWR).

undertakings to assure the broader school community that this association has ended.

It can be implied from Mr Chris Sheedy's correspondence that a continued 'church based counselling relationship with the convicted paedophile' was incompatible with the role of school chaplain. On the 17 October 2007 Mr Stuart McMillan met with many parents to discuss their concerns relating to the convicted paedophile. Several of the witnesses that attended that meeting reported that Mr Stuart McMillan represented to the parents his intended future conduct. Witness E said that at the meeting Mr McMillan attempted to convince parents that Mr MN was not a risk to their children. Mr Stuart McMillan did not acknowledge any incompatibility in service and said:

Firstly, professional people, and I'm a professional person, see a range of people in their professions, so if you're a doctor or a nurse or a psychologist or a Minister of Religion you see a range of people in your profession, you see both the sex offenders and sadly those who have suffered at the hands of the sex offenders. That does not mean that you are a sex offender or that you favour sex offenders over somebody else. As I have already said our whole process was about, this person was living in our community, how do we maintain the safest possible community we can for our children...we are simply offering services to different people...

Mr Stuart McMillan rejected the idea that because he was perceived as a safe person by the students, and seen to associate and approve of a paedophile, younger students may perceive the paedophile as a safe person by association. When asked⁵⁸ whether he would do the same for another convicted paedophile he responded:

The experience says to me that I wouldn't do it in the manner in which it was done this time... I would support a person who came to our church, who demonstrated that they wanted to turn their life around, I would support them in the church.

Parents alleged that the chaplains were running a rehabilitation program for sex offenders. This was denied by Mr Stuart McMillan during his interview with my office⁵⁹. In reviewing Mr McMillan's 2007 work diary there were several entries relating to SOSNT (Sex Offender Support NT). In reviewing these entries (Refer to Issue 3 for Table with details of entries) references to business name registration, set up of email account and placing details on an SOS file along with regular entries at the Meeting Place strongly support the initial steps being taken to set up an SOSNT program. Given Mr Stuart McMillan's failure to disclose this information to my office⁶⁰ it is unlikely these details would have been volunteered under Clause 17 of the NSCP Funding Agreement.

Mr Chris Sheedy⁶¹, through his correspondence, appeared to be left with the impression that the school chaplains' involvement with sex offenders was isolated to Mr MN. Mr Stuart McMillan's work diary further identified that Complainant B raised SOSNT as a conflict of interest, which would have obligated him to disclose these details under clause 17 as it was a

⁵⁸ Interview conducted by my office on 23 July 2009.

⁵⁹ Mr Stuart McMillan: *I'm absolutely sick of that question because the whole line of questioning goes to the thought that we were establishing services and living places for paedophiles in that area. Never was ever going to be anything like that.*

⁶⁰ As during his interview with my office he felt that any services provided outside of the schools were not relevant to our investigation.

⁶¹ State Manager, South Australia, Australian Government DEEWR.

perceived conflict by a parent. I will be referring the question of disclosure by Mr Stuart McMillan, to DEEWR and to the Commonwealth Ombudsman as those matters are outside the jurisdiction of the Northern Territory Ombudsman.

What action was taken by chaplains, DET and the Principals to minimise any risk?

Under the NSCP Funding Agreement clause 22 the Funding Recipient/Service Provider is compelled to comply with the requirements of the Northern Territory. The DET *Code of Conduct for Schools* extends to individuals *visiting the school for a variety of purposes*. The policy requires that all persons on school premises comply with the school's code of conduct. Duty of care is defined within this policy as *the obligation to do everything reasonably practicable to protect others from foreseeable harm*.

Ms Roslyn McMillan was asked if she had taken *any steps to establish whether there were any restrictions placed on Mr MN*. She said that Stuart McMillan had either checked with the police or the legislation. Ms McMillan said that the Police were aware that Mr MN was being accommodated at the Meeting Place; this was confirmed by my office through the ANCOR records. There were, however, no supporting ANCOR documents evident with respect to declaring the nature of the residence ie. refuge to families with children in close proximity to schools. However this was a matter for the police to consider and will not be discussed further in this report. During her interview with my office Ms Roslyn McMillan said that in a discussion⁶² with Witness C:

I listened, like we sat together for nearly an hour probably and ... I did explain the safeguards we'd put in place to keep people safe and in fact it was much safer, him there under supervision than being her next door neighbour, you know, just out in the community.

Ms Roslyn McMillan, confirmed by Mr Stuart McMillan, further provided details of the Good Life Model in which the principles were used to assist Mr MN:

The Good Life Model is a theory that comes out of I think Canada or US and it basically says that there's about half a dozen different activities or safeguards that need to be in place to point a sex offender in the right direction towards a good life and one of them is meaningful employment, meaningful relationships with other adults ...

In reviewing the Statutory Declaration signed by Mr Stuart McMillan on 19 March 2008 and provided to Mr Roger Newman for the DET investigation, Mr McMillan stated he had put into place duty of care measures as he recognised a responsibility to his congregation and the broader community. As a result:

- *Mr MN spoke to the elder who I (Mr Stuart McMillan) had given the responsibility to be close to him...*
- *I (Mr Stuart McMillan) then met with Mr MN and his wife and....I enquired if he was following the orders made by the Department of Justice, which he ensured...that he was.*
- *I (Mr Stuart McMillan) also relied upon evidence such as receipts for his reporting conditions to NT Police. During his interview with my office Mr Stuart McMillan confirmed he was aware of the legislation In terms of the register, the paedophile*

⁶² The discussion took place to assist in resolving Witness C's concerns.

register and the necessary reporting etc. he was obligated to be involved with..... I saw some of the ANCOR receipts...

- *To the best of my (Mr Stuart McMillan's) ability I ensured Mr MN had no contact with children anywhere and he certainly did not have any contact with children whilst attending my church.*

Mr Stuart McMillan stated in the Statutory Declaration, prior to making a decision about Mr MN, he had made enquiries with the relevant authorities (Police and Correctional Services) to ensure that it was acceptable and an appropriate location *and we were ensured that this was acceptable*. Contact details for the ANCOR Detective Sergeant were noted in Mr Stuart McMillan's 2007 Work Diary on 25 January. However during his interview with my office Mr Stuart McMillan revealed that there was:

... dispute between various parties as to the conditions for Mr MN and I'm not going to engage in conversations or answering questions that go to a dispute between ANCOR and supervising authorities and the individual in terms of court implied orders etc. and some of the stuff that you are asking about now ... were the subject of those disputes at that time. In other words, initially there was no difficulty in where Mr MN was residing. Subsequently there was some things referred to that suggested he shouldn't be residing there and there was a dispute about what the particular orders were...

Each of the Principals for the five schools within the scope of this investigation were asked about concerns brought to them by parents relating to the convicted paedophile. All five Principals said they were aware of the situation.

Ms FH, Principal Humpty Doo Primary School was made aware of Complainant A's concerns in late 2007. Subsequently there were telephone conferences with the rural schools, which were later followed by a meeting in the Mitchell Centre, Darwin City. Ms FH, however, made it very clear to my office that she believed:

1. the school chaplaincy service, and
2. the service provided by the school chaplains to the convicted paedophile and his wife within close proximity to her school

were unrelated and were not incompatible.

Mr Stuart McMillan's student notes revealed that he was told by Ms RN⁶³ that a mother's partner *abused/raped other guy...* The child of the mother mentioned was receiving pastoral care from Mr Stuart McMillan. My concern becomes evident when considering why Ms RN was making comment at all about a student's family member. One could only reasonably conclude that Mr Stuart McMillan discussed the Humpty Doo Primary School student and/or their matter/family with the convicted paedophile's wife. As the NSCP guidelines were not applicable at the time it could not be considered to be a breach of the NSCP Code of Conduct for the chaplains.

Ms SD, Principal Berry Springs Primary School told my office that she was under the impression that a convicted paedophile and his wife needed assistance and were under a program. When Ms SD was first told about Mr MN she did not realise the close proximity of

⁶³ Wife of convicted paedophile Mr MN.

his accommodation to the schools. Ms SD said that when she found out the convicted paedophile was being housed at the Meeting Place she raised her concerns directly with the General Manager PARCS, Ms SM. A meeting at the Mitchell Centre then took place on 19 October 2007. Ms SD was told by her Assistant Principal that the chaplains were asked to remove the paedophile from the Meeting Place if they were going to continue the chaplaincy programme. As Ms SD was interstate her Assistant Principal, Ms HB attended the meeting on her behalf. Present at the meeting were Mr RW⁶⁴, Ms SM, the respective School Principals and Mr Stuart McMillan. There were no minutes of this meeting to confirm what occurred at it. Ms SD said she had also spoken with Ms Roslyn McMillan and suggested that the church move the convicted paedophile away from close proximity to the children. Ms SD also said DET took the position that ... *if they were involved in the chaplaincy program that they couldn't be involved in any paedophile program.*

Ms MB, Principal Girraween Primary School said that on becoming aware of parental concerns she spoke with Ms Roslyn McMillan about the convicted paedophile. She said that a *high number* of meetings were held by the Principals to discuss the matter. Ms MB could not recall whether there were any collective decisions made.

Mr AC, Principal Taminmin High School said that he became aware of parental concerns in relation to the convicted paedophile around September 2007. As a result he made some enquiries of the then Sergeant of Humpty Doo Police Station, who reassured Mr AC that there were no breaches of any law. Mr AC recalled attending the meeting held in the Mitchell Centre. He said of it:

And I think I indicated at that meeting that there was significant concern about this situation and my intention was to talk to Stuart and Ros about that, which I did. I said to Stuart and Ros, this situation is adversely affecting our operations unless we're in a situation where this would cease we'd have to reconsider whether we continue with the service... My concerns were that there was a community belief that there was a risk to young children and while I believed there was probably less risk to the Taminmin kids, I certainly believed with the numbers of school children in the area there was a strong perception...

Mr JT, Principal Bees Creek Primary School said he did not recall attending any meetings to specifically deal with the parental concerns around the convicted paedophile. He did attend meetings with Principals where newspaper reports of the convicted paedophile were discussed. Mr JT's school was the only school out of the five rural schools not to have the chaplaincy service prior to the NSCP, which commenced in October 2007.

During an interview with my office Mr RW, Director of Policy, Schools Operations and Strategy at the time said:

During the time that I was in there.. it's a while ago now but I'd say there's probably about four or five phone calls that I had from people in the rural area about an incident related to someone who was to be involved in the chaplaincy program... They were parents of schools and one was a Humpty Doo parent, one was a Berry Springs parent. There was a third parent but I'm not sure whether they were Bees Creek but it was in the rural area. And they were concerned that a person who had been convicted as a paedophile had actually, was in a safe house and been located in the Humpty Doo precinct in a church safe house within the

⁶⁴ Director of Policy, Schools Operations and Strategy at the time.

Humpty Doo precinct and their concern was around the close association to the schools... So one of the actions that I worked on was to liaise with the Principals about that complaint and then also liaise with the chaplains about the complaint and through that process they actually moved that person from that location... I also had conversations with the complainants... So I was actually following through a process that the department has...

Mr Stuart McMillan's school diary notes confirmed the meeting held at the Mitchell Centre on 19 October 2007 and further recorded *Advised moving by end of weekend.*

The Principals and DET took sufficient reasonable steps/action to address the specific concerns of the parents relating to the convicted paedophile. It was unfortunate that the schools and DET failed to tell the parents that their concerns were being addressed and of the outcome.

The incident involving the chaplains allowing Mr MN to live in close proximity to schools and facilities which young children frequented highlights what I see as a flaw in the framework of the NSCP. Neither DET nor the schools are a party to the agreement or contractual arrangement between the chaplains and DEEWR. The agreement that determines the duties of the chaplains is an agreement with DEEWR, a Commonwealth agency. DEEWR funds the chaplains or in this case the Uniting Church which employs the chaplains. The Funding Agreement between DEEWR and the Uniting Church includes clause 22 *Compliance with Laws and Our Policies*, which requires compliance with all relevant statutes, regulations, by-laws and requirements of the Northern Territory. However any perceived breaches by the chaplains must be reported to DEEWR for consideration and action. In my view DET ought to be a party to the agreement with DEEWR and the chaplains so that the chaplains are answerable to DET and the schools and amenable to direction.

The quandary over the creation and storage of the records of one-on-one sessions also demonstrates the need for DET to be a party to the NSCP agreement.

A further allegation lodged by parents related to sightings of Mr MN entering the school and school library premises with Mr Stuart McMillan. When Mr Stuart McMillan was asked during an interview with my office he responded:

... I was not, have never been seen with Mr MN outside of the people that go to our church in the school situation, in the community situation. That just didn't happen, that was, you know, it's been, that's a total fabrication. And the reason I can say that is because every time a person has made that accusation the person that they have described, in fact one of the persons that they began to vilify was not Mr MN but simply because they'd seen this person with me and they were male they assumed something. Now I know a person who was vilified so much that he got called in by his boss to ask if he had made a false declaration on his employment application. And that person was not Mr MN so I'm not just making that up either I'm absolutely aware of that.

When Ms Roslyn McMillan was asked about Mr MN entering onto any of the school grounds she responded *No, I could not see that happening... He really didn't want to re-offend and he was doing everything in his power to have the good life and follow the guiding principles in that. We know that he was going for regular supervision with a psychiatrist, psychologist, I'm not sure... He was reporting to police, he had meaningful relationships, he was under the*

supervision of one of our elders, part of that home group. He had meaningful work in terms of caretaking, gardening, repairing, that sort of thing.

When asked about the supervision of Mr MN whilst at the Meeting Place, Ms Roslyn McMillan replied:

His wife was the best supervisor of all times, there's no way she wanted him to re-offend either.

This belief was naïve in the extreme given the number of times Mr MN re-offended whilst with his wife and the fact that Mr MN's wife did not accompany him all the time. There was insufficient evidence however to support the allegation of Mr MN being brought to and/or entering school grounds. It is quite possible that parents were mistaken about the identity of the man they thought was Mr MN.

12.1.4 Student Records

12.1.4.1 Retention of student information

The DET Policy on *Student Records – Access and Maintenance* prescribes what information should be kept on student records. The policy indicates that it was last updated in February 2005 and therefore would have been applicable from at least that time.

Retention of student information

Student Record Folders (SRF) contain the following essential items that are to be maintained for all students in NT schools:

- *personal details, including age and gender*
- *student UPN ...*
- *examination and test results*
- *reports on student progress*
- *guidance officers' reports*
- *school counsellors' reports*
- *correspondence to/from parents*
- *accident reports*
- *enrolment forms*
- *student update forms*
- *absence notes*
- *records of suspension*
- *disciplinary records*
- *religious instruction forms*
- *transfer notes*
- *permissions forms, e.g. internet, photos*
- *medication details if applicable.*

Ms FH when interviewed about any records or notes routinely kept on children that were seen on a one-on-one basis by the chaplain/pastor she said that Mr Stuart McMillan *has them in his diary. There was a lot of discussion about that with DEEWR about whether these should be kept, I mean, for the confidentiality and all that kind of stuff, but he keeps diary notes of it.*

Mr AC⁶⁵ said during his interview with my office:

we don't have a specific methodology that they notate every kid they've seen and provide it to me on a weekly basis and things. Nor do we with any of our other wellbeing team.

It should be noted that Ms RM⁶⁶ does not use the chaplaincy service for one-on-one sessions in the Senior School and so the issue of records did not extend to the Senior School. Ms MM⁶⁷ confirmed that records for one-on-one sessions with the chaplains were not maintained by the Middle School.

Mr JT⁶⁸, Ms SD⁶⁹ and Ms MB⁷⁰ also identified during their interviews with my office they do not keep notes of one-on-one sessions on their student files; these are kept by the respective chaplains.

The argument around confidentiality for not maintaining one-on-one session notes on a student's file was considered further. The policy on Student Records lists *guidance officers' reports and school counsellors' reports* as compulsory items to be maintained within a student record. To accept the argument of confidentiality would be providing the chaplains with a more privileged position than a Guidance Officer or School Counsellor.

The chaplaincy service is subject to the *Privacy Act* as confirmed in the NSCP Guidelines clause 5.9. I do not consider there is any principle within the *Privacy Act* that prevented the chaplains from recording information relating to the one-on-one sessions. The principles did in fact require the information collected to be stored and secured. The issue that arose in considering the *Privacy Act* related to the 'record keeper'. The record keeper is defined as the agency or person who maintains the records with respect to the personal information. In seeking to establish who is eligible to be a record keeper the *Privacy Act* was quite prescriptive and would extend to the NSCP funding recipient. However as the NSCP funding recipient was not DET or the Northern Territory Government they were not recognised by the Act as being eligible to be the record keeper. This on the face of it essentially created an anomaly as the respective schools did not appear eligible to maintain the personal information collected through the chaplaincy service about their own students. However, one is required to consider section 6A(2) of the *Privacy Act*:

6A (2) An act or practice does not **breach** a National Privacy Principle if:
(a) the act is done, or the practice is engaged in:

⁶⁵ Principal, Taminmin High School

⁶⁶ Assistant Principal, Senior School Taminmin High School

⁶⁷ Assistant Principal, Middle School Taminmin High School

⁶⁸ Principal, Bees Creek Primary School

⁶⁹ Principal, Berry Springs Primary School

⁷⁰ Principal, Girraween Primary School

- (i) *by an organisation that is a contracted service provider for a Commonwealth contract (whether or not the organisation is a party to the contract); and*
 - (ii) *for the purposes of meeting (directly or indirectly) an obligation under the contract; and*
- (b) *the act or practice is authorised by a provision of the contract that is inconsistent with the Principle.*

Clause 13 of the NSCP Funding Agreement (contract) authorised acts to be done in compliance with requirements under the respective Funding Agreement. In examining the NSCP Funding Agreement (contract) Clause 22.1(a) stipulated the funding recipient (the chaplaincy) must comply *with all relevant statutes, regulations, by-laws and requirements* of the Northern Territory. As DET is part of the Northern Territory Government and has a Policy on Student Records the chaplains and schools should be compliant with this policy. In turning to the policy the listed compulsory items did not specifically state Chaplaincy records/reports. However as Student Progress Reports, Guidance Officer Reports and School Counsellor Reports are compulsory items to be maintained on a student's record I believe the intention of the policy would have extended to Chaplaincy records/reports for one-on-one sessions. It is to this end that I consider the failure to maintain this student information on the student records is a breach of the Funding Agreement by the funding recipient (the chaplains) and contrary to the DET policy on student records.

Since the commencement of this investigation DET has developed and amended a Policy on Chaplaincy Services in Schools the Effective Date being August 2009. It was pleasing to see that an attempt had been made by the Department to acknowledge the school's record-keeping requirements in relation to the provision of one-on-one services by the chaplaincy service. I do not believe this goes far enough; the school's record-keeping requirements should be prescriptive to avoid any further possibility of non-compliance.

It is asserted by the DET response to the draft investigation report that as clause 13 of the funding agreement requires compliance with the IPPs in the *Privacy Act* '*... it may be unlawful for the employee of the funding recipient (a chaplain) to provide information to the department*'. This assertion ignores the fact that the second part of clause 13 acknowledges sub-section 6A(2) as is discussed within this report. As a matter of good administration regardless of the legal interpretation of the *Privacy Act* it is undesirable for personal information about students obtained at school for a service organised by the school to have such records kept secret from the school. Unless chaplain records are provided to the school parents have no avenue to obtain them under the *Information Act*. This defect and the doubt DET has on the issue could be eliminated if DET was also a party to the agreement with DEEWR.

In an email dated 29 August 2008 from schoolschaplaincy@deewr.gov.au DEEWR stated:

Under the NSCP the School Principal... must take all reasonable steps to ensure chaplains comply with the Code of Conduct.

If the School Principal does not have access to the chaplain records of one-on-one sessions the School Principal cannot fulfil this obligation. If either DET or the School Principal is not a party to the contract with DEEWR there is no pathway for DEEWR to monitor or enforce compliance with an obligation of the School Principal.

12.1.4.2 Access to student information

As was discussed under the previous section *Retention of Student Information* the chaplains and Principals are required to comply with any Northern Territory requirements in relation to accessing student information. DET Policy on Student Records – Access and Maintenance applicable since at least February 2005 states *Principals should exercise judgement in the release of student information to parents and when in doubt should consult with senior officers of the Department....* In addition to this, section 17 of the *Information Act*⁷¹ requires:

- (1) *A public sector organisation that receives an application [to access information] must deal with the application as promptly and efficiently, and as fairly and openly, as is reasonably possible.*

and

- (3) *If an application is about:*
 - (a) *access to personal information about the applicant or another person;*

...the public sector organisation must deal with the application in a manner that is consistent with the IPPs or a code of practice, as the case requires.

Access to student information by parents

The request for information lodged by complainant C regarding her son's sessions with Mr Stuart McMillan was examined. The above policy and legislative requirements were reviewed in addition to the actions taken by the Principal and DET.

The request for information resulted from Complainant C's son commencing sessions with a psychologist who required the information as part of his assessment. An email dated 7 March 2008 addressed to Mr Kevin Gillan acknowledged Ms FH's refusal to provide the requested information on the basis the requested information was confidential. The earlier request to Ms FH may have been verbal but due to time and memories specific details cannot be confirmed. An email dated 3 June 2008 was then forwarded to Ms FH, Principal Humpty Doo Primary School by complainant C requesting the information. Ms FH acknowledged complainant C's email on 7 June 2008. Then on 17 June 2008 complainant C submitted a follow up email seeking progress on her request and carbon copied this to Ms Maree Garrigan⁷². On 19 June 2008 complainant C received an email from Ms Maree Garrigan advising there was no requirement by the NSCP to keep files on students:

and I have been assured that no additional information is kept at Humpty Doo School. It is possible that the chaplain kept diary notes of his interactions with the complainant's son but you will need to confirm that with him....

On 23 June 2008 Ms FH responded by advising a meeting could be arranged with Mr Stuart McMillan when the chaplaincy programme had been reinstated and all parties had returned from leave. Complainant C then forwarded another email to Mr Kevin Gillan questioning Ms FH's response and confirming the initial request had come from the child psychologist. On 8

⁷¹ In 2008 DET developed further Policy and Policy Guidelines: *Code of Conduct for Schools*. The Policy Guidelines clause 3.3 now specifically states *The department has a legal responsibility and is committed to protecting the privacy of personal information in accordance with the Information Privacy Principles set out in the Information Act.*

⁷² General Manager, PARCS at the time.

August 2008 two emails were forwarded to Ms Maree Garrigan, one from the Chairperson Humpty Doo Primary School Council and the other from complainant C. The email from the Chairperson was in support of the requested information recognising the sensitivity of the matter. The email from complainant C stated that Mr Stuart McMillan did have diary notes and paperwork for her son and requested that these be made available to her. A meeting was held on 8 August 2008 with Ms Maree Garrigan, complainant C, the child psychologist and Mr Stuart McMillan which resulted in the provision of the requested documents.

It appears from the events in the previous paragraph that Ms FH was initially unaware of any information held by the chaplain. Ms FH and Ms Maree Garrigan both failed to appreciate the requirements under the DET policy with respect to maintaining records as the NSCP had not commenced at the time the sessions were provided to complainant C's son. Therefore Ms Maree Garrigan's reference to the NSCP not requiring student files to be held is incorrect on two fronts; the NSCP was not applicable at the time; and the DET policy on retention of student information did require student files to be held. As a result of this failure to appreciate the applicable policy I believe that the request by complainant C was not dealt with promptly and efficiently causing a delay in her son's much needed psychological intervention.

This episode also demonstrates the problem caused by the chaplains only having records of the one-on-one sessions. Those records could be said to be the chaplains' records. This chaplain is not an employee of the school or DET. The *Information Act* only applies to the Northern Territory Public Sector.

Access to student information by chaplains

Another concern evident during this investigation related to the type of student information chaplains had access to. There are no regulatory or legislative provisions that authorise the chaplains to access information about students whose parents have not provided permission for chaplaincy services. I should also note that in accordance with the *Information Act* the schools should exercise discretion in the release of student information even where parental permission for a service has been obtained.

The question arises: *Were school chaplains being given access to all student information in the school system or was this being restricted in some way?*

It was noted that prior to introducing the need for written parental permissions in 2008, lists of children's names whose parents requested 'no contact' (opt out students) were being provided to the chaplains by some of the schools. In my office conducting interviews with the Principals and Assistant Principals it was established that the general procedure now adopted involved a list/s of children being printed off the school administrative and management system by administrative staff. The list/s was/were then provided to the respective chaplain/s.

An exception to the above procedure was Taminmin High School where during his interview Mr AC, Principal, said that restricted access to the school administrative and management system was provided to the chaplains so they could update and view parental permission. The Assistant Principal of the Middle School Ms MM told my office during her interview that she was not aware of what type of access the chaplains had with respect to Middle School students. Whereas Ms RM, Assistant Principal of the Senior School said the chaplains did

not have access to the Senior School students' information on SAMS⁷³. From the varying responses it can only be assumed that this issue of access to information by the chaplains had not been discussed by the Principal with his Assistant Principals. This is concerning as it would indicate compromised monitoring of the chaplains' access. To have update permissions the chaplains would need access to all student names. If this extends to names of students for whom parental permission has not been provided I consider this to be unsatisfactory as the chaplains are NOT employees of DET or the respective schools.

During an interview with Ms SD, Principal,⁷⁴ she said that her administrative staff provide the teachers and chaplain/s with two lists, an opt in⁷⁵ and an opt out⁷⁶ list. Although at interview Ms DW, Assistant Principal, said the lists provided to chaplains were only of children with permission, Ms SD explained that her school commenced providing only a list of children with permission. This was then extended to the second list of opt out children.

The practice at Girraween Primary School is to release only names of children with permission to the chaplains.

Mr JT, Principal, said that the current practice at Bees Creek Primary School is if a child is not on the list held by the chaplain then the child can not participate in the service provided. The Assistant Principal, Mr KB, however stated *...he⁷⁷ always carries around his list of children who can and can't be involved...* On my office questioning this with Mr KB he confirmed he wasn't sure whether the chaplain actually had a list of children who were opt out.

Ms FH, Principal told my office that since the chaplains commencement at Humpty Doo Primary School she had always operated with an opt in system. As at the time of Ms FH's interview she said there were no group, classroom or club sessions provided by the chaplains, only one-on-one sessions where permission was required.

It is clear that to avoid any issues of confidentiality written parental/guardian permission should be obtained prior to releasing a student's name to a chaplain under any circumstance. Although DET can be commended for introducing a Policy, Policy Guidelines and Deed of Agreement in relation to chaplaincy services in schools, the level of detail with respect to procedure is not sufficiently prescriptive.

12.1.5 Access to Students and Location of Services

Until 2008 DET had not developed any formal criteria with respect to chaplains' accessing students. In consideration of the parental concerns raised and an internal investigation DET required all students obtaining chaplaincy services to have written parental consent. Consent will be discussed under Issue 2; however in this section I will be considering the situation where parents have submitted a 'no contact' letter to Principals and/or chaplains. Also, consideration will be extended to chaplaincy sessions provided during class time in addition to the locations of where chaplaincy services were provided.

⁷³ Student Administration and Management System.

⁷⁴ Berry Springs Primary School.

⁷⁵ With parental permission.

⁷⁶ Parents/Guardians have specifically requested 'no contact' with the chaplains.

⁷⁷ Referring to the chaplain.

Complainant D raised concerns about chaplaincy contacts with her children following her request for 'no contact'. Details have been outlined under section 9 - Complainant D of this report. During an interview with my office Mr Stuart McMillan said that there was only one occasion when he made contact with complainant D's son following the 'no contact' request; this was early 2009...*it's the only time I've talked to him. I didn't say 'hi'. He was outside the administration block in a crumpled heap on the ground bawling so I said to him 'look' and there was nobody else around so I said to him 'look, I know I'm not supposed to talk to you but are you OK?'. The counsellor's office was just inside there and so was the nurses office inside the door where he was ... my intention was to get somebody and he put his hands up, so I walked away from him and went into the counsellor to seek assistance.*

The second concern complainant D raised about chaplain contact was with respect to her daughter on or around 30 October 2007. Mr Stuart McMillan told my Investigation Officer:

It might have been orientation day... complainant D's daughter spoke to the teacher and she left the room and that's the procedure in process at the school that we've established... I would have been doing one of the orientation groups... It hadn't dawned on me in the orientations that... she would be part of that. I check those things now, I check the class list before I do anything. Mind you though, I don't have to. The process that we have is that it's the student's responsibility to absence themselves from the class... I'm saying that's the Taminmin process because they're high school students so they're responsible enough to decide whether they can sit there and listen to an orientation thing or whether they feel concerned about the person that's doing the presentation.

The 'no contact' letter had been provided to Ms SD, Principal, whilst complainant D's children attended Berry Springs Primary School. Ms SD said that prior to the orientation at Taminmin High School she had forwarded details of the 'no contact' request to Ms MM, Assistant Principal Middle School. Ms MM confirmed she had been forwarded the request, however said:

it just would have been a really bad mistake... And that was before... it was really obvious that there was a big community backlash against the chaplaincy... it was totally unintentional and ... we never ever put a kid or a chaplain in that situation knowingly.

In my view a parent's request for 'no contact' should be respected. What makes it difficult to comment is the fact that DET have not developed any detailed guidelines around chaplains and student contact. I am very impressed, however, with the proactive steps taken by one of the School Principals, Ms SD, to assist her in managing chaplaincy programme risk. The document developed for Berry Springs Primary School identified the potential for problems, assessed their risk and outlined action that could be undertaken to minimise these risks. Extracts of three relevant examples included:

1. **What can go wrong:** *Parent has given notification that the chaplain is not to speak to or be involved with their child. Chaplain meets child in playground – sorts out a problem with students and talks to the child. Child reports to parents.*

a. **What could be done:**

- *All parents informed that the chaplain works in the school....*

- *The chaplain will not conduct programs, pastoral care, etc for students where permission is not obtained.*
- *The chaplain will not be out in the play ground at break times.*
- *The lunch time Kids Club will be open only to those who 'Opt in'.*

2. **What can go wrong:** *Chaplain is accused of dealing inappropriately with a child.*

a. **What could be done:**

- *Police check, code of conduct signed.*
- *Written Parent permission.*
- *Room used for individual pastoral care etc – with windows.*

3. **What can go wrong:** *Chaplain includes child whose parents have not given permission.*

a. **What could be done:**

- *List of 'opt in' children given to the chaplain. The chaplain is only to be involved with small groups and individuals from 'opt in' list. At no time is the chaplain to contact others unless the parent makes contact with the chaplain to inquire about the program etc.*

I consider this type of detail to be a step in the right direction. Without casting judgement on the actual content it is a platform that could be expanded and extended to more problems and actions for minimising or eliminating risk. Even if the risk does not catalyse into harm it would be good practice to be able to reassure parents who have concerns that there is a policy. Parents when considering giving consent could be informed of the substance of the policy so that their consent is an informed one.

It would be useful for DET to adopt a similar level of detail for inclusion into the Chaplaincy Services in Schools Policy Guidelines.

Concerns about safety were also raised by parents with respect to venues used by the chaplains for one-on-one sessions with students. Two questions become evident when considering this particular issue. Firstly, was the actual location and visibility within the venue appropriate to ensure safety and secondly was the actual risk associated with one-on-one sessions acceptable. The latter of these two questions will be discussed under Issue 4.

The following information was established for each of the schools within the scope of this investigation during interviews with the respective Principals and chaplains.

School	Chaplaincy Service	Venue
Humpty Doo Primary School	One-on-one sessions	Were setting up a demountable near the music room because it had no class in it.
Berry Springs Primary School	One-on-one sessions	Prep room, venue not left to the discretion of the chaplain/s.
Bees Creek Primary School	One-on-one sessions	Venue left to the discretion of the chaplain. No set criteria only that service is provided on school grounds. However a teacher resource room has been allocated to the chaplain for use.
Taminmin High School	One-on-one sessions (Middle school only)	Block 8, room is half a classroom (office).
Girraween Primary School	One-on-one sessions	No designated venue. Ms Roslyn McMillan uses the resource room however Mr Jason Purugganan <i>has only worked with a couple of kids one-on-one and that's more with angry young boys who often are sitting under a tree or out on a table or walking around the oval.</i>

Although there are no existing DET guidelines with respect to suitable venues a level of due diligence would have been expected from each of the Principals.

I would add to this that it would have been considered highly inappropriate for a child to obtain individual chaplaincy services off the school campus during school hours without a parent present. In questioning each of the chaplains it was established that all individual services provided during school hours were on school campus. One exception was identified by Ms FH, Principal Humpty Doo Primary School. Ms FH said that a male student was having one-on-one sessions with Mr Stuart McMillan at school; however his sister was having one-on-one sessions with Ms Roslyn McMillan off the school grounds. Ms FH explained that as the services provided to the sister were out of school hours these were arranged by the parents with the chaplain and not considered part of the NSCP.

12.1.6 Proselytising

Proselytising is the act of attempting to convert people to another opinion and, particularly, another religion⁷⁸.

The Code of Conduct for school chaplains under the NSCP stipulated:

- 1. chaplains are not to take advantage of their positions to proselytise for their denomination or religious belief. (Paragraph 9)*

⁷⁸ Wikipedia.

2. the school chaplain will: *respect the rights of parents/guardians to ensure the religious and moral education of their children is in line with their own convictions.* (Paragraph 2)

The NSCP Guidelines further stated under clause 1.5 that a school chaplain should not be *seeking to impose any religious beliefs or persuade an individual toward a particular set of religious beliefs.*

12.1.6.1 Distribution of Bibles at Taminmin High School

During Mr AC's⁷⁹ interview he confirmed he was aware of two occasions where bibles were distributed to students at school assembly, *once in our gym (2007) and once in our main quadrangle area (2008).* Mr AC explained that this happened through the Gideon Society⁸⁰. Ms MM, Assistant Principal Middle School, Taminmin High School, confirmed that it was the Gideon Society that distributed the bibles to students. Ms MM was quite adamant that the two chaplains did not assist in the distribution as it was a project run by her. She said:

Well they come in and ask and the kids have the choice of taking it or not. They come in every year and do that. So they're (the chaplains) totally uninvolved and totally separate.

However when details of the contact person from the Gideon Society was requested by my office Ms MM responded *They just give me, there's different people, they just ring me every couple of years and say, you know, we'd like to come in, are you OK with it.*

Ms Roslyn McMillan said *I don't think Stuart and I have ever been to Taminmin handing out bibles or any school for that matter. The Gideon's went to Taminmin High School at one stage and the Gideon's were handing out bibles and I happen to be there at that time.*

12.1.6.2 Religious posters

During an interview with Ms SD, Principal Berry Springs Primary School, she said that Ms Roslyn McMillan had placed religious posters in the prep room which was accessed by teachers and groups of children. Ms SD said *....I said to take them down because its not appropriate. You know if a parent's asked you to talk about God to a particular student then you can show that particular student but they're not to be put up. And she said she wasn't thinking.....* I can only reasonably conclude that Ms Roslyn McMillan placed the poster up with an intention to promote/proselytise her religious beliefs to the school community. The actions could reasonably be construed as breaching the NSCP Code of Conduct, however the School Principal managed the situation immediately and appropriately with minimal impact on the school.

12.1.6.3 Discussions with students

This information has been discussed in detail under Issue 2 *Informed Consent.*

⁷⁹ Principal, Taminmin High School.

⁸⁰ Gideon Society is a Christian organization dedicated to distributing copies of the bible in over 80 languages and 190 countries of the world, most famously in hotel and motel rooms.

12.1.6.4 Attempted contact with parents

Witness F was infuriated at the fact that she had lodged a 'no contact' letter with the school and two hours later received a phone call from Ms Roslyn McMillan to question her request. Ms DW, Assistant Principal Berry Springs Primary School, when interviewed confirmed the call made by Ms Roslyn McMillan. Ms DW said:

I think last year we had a situation where she actually contacted a parent and Sheila then reprimanded her on that particular and told her that she wasn't to contact parents, that we would publicise her being in the school through the newsletter and then parents could contact her.

Ms SD said she was unaware of the intended contact prior to it happening, however on receiving an email from witness F, she told Ms Roslyn McMillan not to contact anyone on the opt out list. DET by email⁸¹ to witness F on 4 March 2008 confirmed that they did not approve of the chaplain contacting Witness F and acknowledged Ms McMillan's regret of 'the further angst caused'. Ms McMillan's actions could be considered as a lack of respect for parent's rights. I accept that the call by Ms McMillan was more likely than not an attempt to change Witness F's mind about the chaplaincy service, which would have been contrary to the NSCP Guidelines and Code of Conduct.

Complainant A also raised concerns with respect to someone from the church phoning her. Complainant A said that around:

January, February, Marchish. On Monday night about elevenish I had a lady by the name of SC ring me at home. She actually runs the bush church out at Humpty Doo in Challenor Circuit and was speaking on behalf of a KF who's a pre-school teacher at Girraween and a member of the congregation of the Uniting Church at Humpty Doo, who would like to meet with me.K's son and my oldest daughter are friends at school. I'd been to my daughter's best friend's house and K had been there on a few occasions. I'm assuming that she felt comfortable enough to approach someone to approach me, and I declined.

Complainant A said she believed the intention of the proposed meeting was to get the complainant *To leave thechaplains alone and to stop pursuing how this came into my schools, as I was dealing with Taminmin as well, and to basically stop making a noise, I was at the point of ruining everything. It had taken them six years to get in to the schools.*

Although the schools and DET do not have any power to direct the actions of people in the general community, their chaplaincy service guidelines could address this type of issue reoccurring. Guidelines should be extended to recognise the rights of parents with respect to pursuing their concerns/complaints through the appropriate/specified channels without educational staff or chaplains trying to influence their decision.

12.1.7 Dealing with complaints

DET has an existing Complaints Policy developed on or prior to 2007. The policy identified relevant principles to be adhered during the complaints process and also provided information on lodging a complaint. The Policy however relates to all complaints and does not differentiate for chaplaincy services.

⁸¹ Acting General Manager Palmerston Rural, DET (previously Department of Employment, Education and Training)

9.4 LODGING A COMPLAINT

- a) *A person may complain verbally or in writing to a Principal, general manager, director or line manager or, in writing to the Chief Executive. If a verbal complaint is complex or very serious the complainant may be required to restate the complaint in writing or agree to sign a written summary prepared by the Principal, general manager, director or line Manager. **Complaints referring to a particular school matter should be referred initially to the Principal of that school, or the relevant School Manager.***

Note: a written complaint that contains personal abuse, inflammatory statements or material that is clearly intended to intimidate will not be addressed and the complainant will be informed accordingly. Similarly, a verbal complaint that contains personal abuse, inflammatory statements or comments of a threatening nature may be terminated at the discretion of the staff member taking the complaint after firstly warning complainants of that intention.

9.7.2 PRINCIPALS

- *maintaining confidentiality and impartiality in dealing with each matter*
- *ensuring, wherever appropriate, that concerns and complaints are resolved at the school level*
- *developing and implementing a process for registering, responding to and managing parent enquiries, concerns and complaints*
- *ensuring that the process for managing complaints includes recording and monitoring of complaints and their outcomes to enable improvements to be identified and implemented*
- *ensuring that enquiries, concerns and complaint procedures are communicated clearly to parents and community members*
- *ensuring that school policies and procedures are modified, where necessary, to address areas of concern*
- *ensuring that processes are consistent with all relevant Department of Employment, Education and Training policies*
- *ensuring that complainants and respondents are aware that they can have a friend or adviser present during any discussion, and*
- *escalating the complaint, where appropriate, to Director Schools or Schools Managers for either resolution or, if the complaint has possible disciplinary implications for an employee, to the Chief Executive or nominated delegate to manage.*

Principals and Assistant Principals from the schools within the scope of this investigation were interviewed about their complaints handling processes. The processes appeared to be fairly consistent in that parents were able to raise their concerns with the Principals and/or Assistant Principals and if they were not satisfied with the response the parent could then take their matter to the school council or the General Manager for their school area.

12.1.7.1 Humpty Doo Primary School

Ms FH during her interview whilst referring to how she managed complaints about the chaplaincy service said:

That's difficult cause they didn't come to me with their concerns, they emailed Federal politicians, State politicians, DET Executive, school council members, staff and the senior leadership team at Humpty Doo. So it became increasingly hard and

there was all sorts of accusations, there were emails that you couldn't make sense of talking about dead puppies, things like that, that were quite, yeah. It has been quite horrendous for myself... One Friday I had 7 emails in an hour from complainant A.

Parental complaints did include Ms FH. She failed to provide sufficient response at the school level, which in my view escalated parental concerns⁸². An example of this was where Complainant C in discussion with Ms FH and two other staff members referred to Mr GM showing photos of alleged bullying offenders on a computer. Ms FH challenged the parent about Mr GM's actions. The complainant felt that Ms FH denied Mr GM had done that to undermine the complainant's credibility.

During his interview with my office Mr GM said that it was quite possible that he did show the respective photos on the school computer as they were trying to identify the alleged bully. As minor as the matter was it was escalated to the Executive Director, DET as it had not been dealt with appropriately at the school level. Rather than denying Mr GM's actions, Ms FH could have simply asked Mr GM, in which case it was more than likely his response would have been similar to that provided to my office.

In DET's response to the draft investigation report Ms FH said:

I was unaware that SAMS had photos of students attached until after this meeting, it was newly put on by the Network Manager. I did ask GM about the incident and he was unsure if it occurred. I didn't feel I needed to update complainant C about these findings as the meeting covered more serious matters concerning the wellbeing of her son, and I felt this was the school's and her priority.'

Complainant A said that around the middle of 2008:

we had a subcommittee at Humpty Doo Primary School, it was the chaplaincy subcommittee, made up of myself, Complainant B and Complainant C. I think, once again, it was a placation, we were foisted off onto our own little group. Basically, I guess, we were being a pain in certain people's posteriors and they figured if they could send us off on to some little group that we would be out of everyone's hair.....

An email from complainant A to the Chairperson of the Humpty Doo Primary School Council dated 10 September 2008 said that the working group consisting of the three complainants was *looking to provide balance and safe guards within HDPS*. The complainant went on to say within her email:

*At no time prior to last night was it brought to the working groups attention that these in principle guidelines had to first satisfy the separate LSCC comprised of members with vested interests in nullifying the HDPS working groups efforts to achieve a child safe NSCP in my children's school. The emailed response from the School Council Chairperson stated *The Local Chaplaincy Committee (LCC) appears to be a new body and as it hasn't been raised at council, it isn't really a committee**

⁸² The statement provided by Ms FH within DET's response to the draft investigation report stated ' *As the emails were very public my General Manager was managing myself and the responses to the emails. All emails that required a response from me was responded to. Many emails were responded to from Noelene McCormick in the early stages as well. Then more official letters were sent. I didn't send emails etc unless they were vetted or discussed with DET Executive.*

of council and is (apparently) a reference group of the chaplains. Until I meet with them, I don't have much of an idea of what they're about.

DET recognised Local Chaplaincy Committee's within the schools in the *Guidelines for Chaplaincies in Northern Territory Government Schools 2004*, DET in their response to the draft investigation report said the guidelines were not applicable. The respective guidelines under clause 2.2 define Local Chaplaincy Committee as *...the body approved by the School Council, and established in conjunction with Christian Churches and societies recognised by the NTCC⁸³, concerned to support a Chaplain in that school.* Clause 4.3.5 also suggests that the membership of a Local Chaplaincy Committee should *ideally include:*

- *the Principal of the school or nominee*
- *representatives of local Christian denominations (recognised by NTCC) with students in the school*
- *nominees of the School Council – at least one teacher from the school and one parent*
- *at least two students in the school or recent past students along with other community representatives, and*
- *where applicable a representative of the employing agency.*

In fact one of the parties to the Taminmin High School agreement with the chaplains prior to the NSCP was the Local Chaplaincy Committee.

It is evident that the Local Chaplaincy Committee was not established in accordance with the respective guidelines given the School Council Chairperson stated in his email that the Local Chaplaincy Committee had not been raised at council nor was it a committee of the council.

The facts may be construed as a failed attempt to resolve parental concerns through distracting their attentions to non-genuine purposes. This is what complainant A believed and her belief was in my view reasonable. With the introduction of a chaplaincy service complaints procedure and dispute resolution process within the DET Chaplaincy Service Guidelines it would be anticipated these types of situations be avoided and parents could feel genuinely empowered by following the specified procedures.

Under the new 2009 policy, relating to chaplaincy services within the schools, the school council has now been provided with the ability to determine the appropriateness of a sub-committee. The sub-committee can be formed to *plan, implement or manage the chaplaincy service. Should such a sub-committee exist, the school council, in consultation with the Principal is responsible for determining the membership and terms of reference of this group.*

Attempted industrial action targeted at children of complainants'

On 18 November 2008 my office was contacted by complainant A with concerns relating to proposed action to be taken by teachers affecting children of complainants but not other students. Complainant A wrote:

It is my unqualified belief that as a result of my having followed due process and having lodged my complaint with the Office, my children who attend HDPS have

⁸³ Northern Territory Council of Churches.

now been made the targets of retribution by party with a vested interest in seeing the return of the NSCP to my children's school. Specifically AEUNT rep SP, WW, JW⁸⁴, Taminmin teacher AH with the consent of Principal FH who offered to write the letters to the parents of children who were to be excluded in Union endorsed action. Independent MLA Gerry Wood has since issued a media release supporting my belief and endorsing the proposed actions.

My office forwarded a copy of complainant A's email to DET's Legal Services seeking an explanation. The response provided that *Ms Garrigan (General Manager PARCS), after checking with the Acting Executive Director Schools, Mr Alan Green, also advised the Principal of Humpty Doo Primary School (the School) that it was the department's view that the action proposed by the AEU(NT) was not lawful and the Principal was asked to call her staff together to advise them accordingly..... Mr Green also telephoned the President-elect of the AEU(NT), who attended the meeting at the school, to advise him that it was the department's view that it would not countenance its teachers withdrawing their services in relation to any children of the school and that the department's teachers were not authorised to take such action in relation to any children enrolled at the school.* As a result of DET's Executive action, the matter was resolved to the complainant's satisfaction. However had the Principal dealt with the parental concerns and matter appropriately in the first instance it would have been less likely to have escalated to the stage it did.

There was an entry made by Mr Stuart McMillan in his school notes on 18 September 2008, which followed a meeting with Ms FH, one of the teachers and the School Council Chairperson⁸⁵. The entry recorded *Rung 2.09pm EAS down Friday 9am Union Friday pm.* This evidence supports the allegation that involvement of the Union was not entirely free of influence by Ms FH and Mr Stuart McMillan.

12.1.7.2 Berry Springs Primary School

The Assistant Principal, Ms DW told my office that complaints may be directed either to the Principal or herself and if parents are not satisfied with the response they may take their matter to the General Manager.

Witness D said she recalled complainant D attending a school council meeting to put forward her concerns about the chaplaincy service. The witness said the council had treated the parent quite rudely as they didn't listen to her and gave her a hard time even though she presented well thought out issues. It could not be said that the complaint process failed the witness and complainant, but rather the conduct of the school council. The conduct is a matter for the Principal to address directly with the school council. As part of the process the Principal should have confirmed the next step to the witness and complainant if they were not satisfied with the response/conduct by the school council.

⁸⁴ Humpty Doo Primary School teacher

⁸⁵ The statement provided by Ms FH in DET's response to the draft investigation report claimed '*Meeting on 18 Sept at Taminmin High School was the Local Chaplaincy Committee (as per Kevin Gillan's recommendation) meeting to inform Stuart McMillan and also the School Council Chair that Kevin Gillan had instructed that Stuart McMillan was not to access Humpty Doo Primary premises. I don't know what the union reference was except it may be a sub-branch meeting. Staff at the school felt strongly that they were being harassed and bullied by parents in the community and went to their union for support. I didn't offer to write any letters to the parents of the children to be excluded as I couldn't legally do this. Alan Green did advise me teachers could take out restraining orders against harassing and abusive parents.*'

12.1.7.3 Bees Creek Primary School

At interview Mr JT, Principal, said that parents could raise their concerns with the Principal initially. If their issues were not resolved then these could be brought to the school council. Mr JT also recognised that parents could go directly to DET. This process was confirmed by the Assistant Principal, Mr KB, however in the absence of the Principal, if a parent was not satisfied with his response he would refer the matter directly to the DET General Manager of the school area.

12.1.7.4 Girraween Primary School

Ms MB said when interviewed that when complaints are received they are dealt with by the Principal if that is the level required. However if required the complaints about the chaplaincy are forwarded to the committee⁸⁶ for consideration and resolution. Witness C addressed her concerns directly with the school council as she had been a council member. As her concerns were not addressed to her satisfaction she removed her children from the school.

12.1.7.5 Taminmin High School

Mr AC, Principal said that he received concerns from parents and attempted to deal with them. There was no indication that parents were provided with further information as to where they could go next if they were not satisfied with his response.

12.1.7.6 Department of Education and Training

With the Executive of DET becoming involved in the parental complaints against the chaplaincy service an internal investigation was initiated and the chaplaincy service was suspended for the duration of the internal investigation. DEEWR also became involved and conducted their own investigation. As a result of the two investigations it was established through their findings that there were no breaches of the NSCP. Parental concerns continued as it was perceived that the DET was investigating itself and would find no faults. Consideration of the reliability and accuracy of the DET investigation report has been discussed later in Issue 3 of this report.

The chaplains

When parents directed their concerns to the chaplains, Mr Stuart McMillan and Ms Roslyn McMillan, attempts were made to resolve those concerns. During an interview with my office on 17 October 2007 Mr Stuart McMillan explained

...I agreed to meet with two of the complainants and I rung one of the female elders from our congregation and asked if she would be with me for that meeting, I thought that was appropriate. Ros had had some conversations with one of those ladies and I was aware of some of the issues there, so I thought it was appropriate to have a female with me. When they turned up for the meeting they said there's a couple of others coming. I had an office set aside with some water and so forth, like this there was four of us there. In the end there was 25, 30 people

⁸⁶ School council subcommittee that meets to oversee chaplaincy activities, hear reports or concerns. Ms MB said later in her interview: *We have the school council subcommittee which haven't met and that's because of the unavailability of parents this year.*

turned up for the meeting. I didn't know that was going to be the case. We changed the venue quickly and I agreed, probably wrongly, in hindsight, I agreed to meet with them all. A very difficult meeting to be able to move anywhere when you've got 25, 30 very concerned, very agitated women.

We attempted to answer their questions. As I said it wasn't a very good process and in hindsight I probably shouldn't have gone ahead with it and realised the meeting was... at the end of the meeting I was told it was successful but they reneged on that pretty quickly. One of the main two complainants said that she would be withdrawing her complaint and the other person said that if she received a letter from me stating certain things that I had stated in the meeting that she would be satisfied with that and I provided that letter. And the complaints continued to roll on.

There are general complaint procedures that apply within DET. It is recommended that the new chaplaincy service policy/guidelines either provide a complaints procedure specific to the chaplaincy service, or specify that DET's complaints process is applicable to complaints about chaplains.

12.1.8 Chaplain conduct

The NSCP Code of Conduct requires that a school chaplain will:

- 1. respect, accept and be sensitive to other people's views, values and beliefs that may be different from his or her own (paragraph 8a)*
- 2. uphold a parent/guardian and individual's right to choose their beliefs and values (paragraph 8b).*

In considering Mr Stuart McMillan's conduct at the meeting held on or around 17 October 2007 with parents wishing to express their concerns, compliance with the Code of Conduct was relevant.

The NSCP became effective prior to 17 October 2007 at Bees Creek Primary School, Berry Springs Primary School and Girraween Primary School. Several of the parents said that during the meeting on 17 October 2007 Mr Stuart McMillan's conduct was inappropriate.

Complainant D said that, during the meeting:

... we sat down and asked him basically can you please not have a paedophile living next door to our schools, we find it inappropriate, we're frightened, we're scared, can you, and he basically said 'no' where he is in his legal right to house the paedophile there. I had in my hand a copy of the paedophile's court transcript, sentencing transcript. I said to Stuart, 'Stuart do you think its fair to have this man in the area where he has already committed an offence' and he told me that, he said to me, I don't know what you've got in your hand, I don't know what you're reading from but its all, its not true. Well, I said, it's a court transcript and I proceeded to read out, minus the gory details, the dates and times that this paedophile had ...Committed an offence ... I gave him a copy ... He basically said to us, he wasn't interested in what we had to say, that he was in his legal right to house that guy there. One of the other mothers asked what would he do if he has a

paedophile looking for accommodation again. He said that he will house him and keep it very secret.

Mr Stuart McMillan said:

Well I said it was a bad process, you know. They, well, it got quite heated at one stage and some of them thought I had called them a liar, I think, if I remember correctly. I mean I don't have notes from that meeting. And they produced some material.....They produced a court transcript and that took me by surprise. I realised in hindsight what that was all about but in that meeting process I didn't, in the heat of that meeting, so yeah there were a couple of points at that meeting that could have been a whole lot better if...he had been prepared.

Witness C said that at her meeting with Ms McMillan her conduct was inappropriate. Ms Roslyn McMillan was asked by my office about the meeting which she recalled occurred towards the end of 2007. Ms Roslyn McMillan said that witness C:

was one of several women that I met with over that period when it became public knowledge that MN and RN were living where they were living. ... She was particularly on about trust... And I agreed with her that, you know, the trust thing was a huge thing, I acknowledged that... I listened, like we sat together for nearly an hour probably and she did say a lot of that and I did explain the safeguards we'd put in place to keep people safe...

Ms Roslyn McMillan was then asked whether she had stated:

the only reason she (witness C) had an issue with Mr MN was because she must have been sexually abused as a child.

Ms Roslyn McMillan explained:

Maybe at some point I would have said that's what has emerged, and I've said to you that a number of women had come to speak to me, including witness C, and everyone of them had told me either they had been abused or someone close to them had been abused. And maybe I'd said that to her that this was a pattern, you know, that all the women who were speaking to me had this in their past.

In addition to this Ms Roslyn McMillan was asked whether she had stated to witness C that complainant A *'has a lot of issues and she needs to find something better in life than to worry about where we put a member of our congregation'*. Ms Roslyn McMillan did not deny this statement. She said *I don't remember if I said that*. When asked by my Investigation Officer she agreed that it was not a reasonable response.

After parents raised concerns Mr Stuart and Ms Roslyn McMillan sent a letter to the Chairperson of the Berry Springs Primary School Council. The letter was dated 14 November 2007 and titled *Provision of Chaplaincy Services*. The contents of the letter stated:

We are aware of yet another attempt to discredit the chaplaincy service that is currently being delivered at Berry Springs Primary School.

The highly emotive and persuasive language used within the letter was not in keeping with the Code of Conduct which required chaplains to *respect, accept and be sensitive to other*

people's views, values and beliefs that may be different from his or her own. The letter went on to say:

The suggestion that we would act in an unprofessional manner is scurrilous and defamatory... The small group of people who seek to undermine the delivery and effectiveness of the chaplaincy service... the destructive actions of this small group are disadvantaging the children and community of Berry Springs.

Mr Stuart McMillan told the Investigation Officer that Ms Roslyn McMillan had drafted the letter:

At the time when various things were being disputed and claims were being made, all sorts of things were being said...

The attitude reflected in the letter was inconsistent with the NSCP Code of Conduct, with the focus being on the perceived damage to the chaplains' services rather than respecting and addressing the concerns of the parents.

12.1.9 Parent petitions and surveys

Parent petitions were instigated by those feeling aggrieved with the chaplaincy service and/or their providers, in contrast to surveys which were developed by the respective schools, each having one thing in common, to measure the level of support for the chaplaincy service. The following table details the respective petitions and surveys to demonstrate the general support of the chaplaincy service within the schools.

School	Petitions		Surveys		
	Was petition undertaken?	Number of signatures	Was survey undertaken?	For	Against
Berry Springs Primary School	Yes	42 ^e	Yes	16 ^a	9 ^a
Humpty Doo Primary School	Yes	24 ^d	Yes	55 ^c	16 ^c
Girraween Primary School	Yes	18 ^b	No	-	-
Bees Creek Primary School	No	-	No	-	-
Taminmin High School	No	-	No	-	-

a – provided by Ms SD through statutory declaration obtained by Mr Roger Newman.

b – provided by Ms MB through statutory declaration obtained by Mr Roger Newman and confirmed by actual petition.

c – provided by Ms FH through statutory declaration obtained by Mr Roger Newman.

d – confirmed by actual petition.

e – confirmed by actual petition.

Only two schools undertook a survey of parents to measure support for the chaplaincy service. Parents of three schools generated petitions against the chaplaincy service. Two of the schools relied on informal feedback by parents. At Bees Creek Primary School the chaplaincy service did not exist prior to the introduction of the NSCP. It would have been cursory to obtain informal feedback from parents prior to the NSCP funding application.

Mr Kevin Gillan during an interview with my office with reference to the process for petitions said:

... its not the Principal's responsibility to respond to a petition, they would refer that on to their schools manager, to the Director, the Regional Director.

It was confirmed by Mr Alan Green that if a petition with a large number of family signatures was presented to the Principal and the school council he would:

expect that the General Manager of Schools is made aware of that immediately because we have a critical incident policy and set of guidelines, expectations...I would expect to know about that.

Ms Maree Garrigan who was General Manager PARCS at the beginning of 2008 told my office:

...obviously the Principal has a lead role in dealing with things that come up like that within the school. And I would expect that the Principal would take those concerns seriously. I would expect that the Principal would meet with the parents and work through what the issues were and I would expect that they would come to some agreement about how to move forward on it. I would also expect that if ...the parents weren't satisfied with what was happening, you might call on the expertise of the General Manager to come in and... meet with those parents or you could escalate it to a higher level...

With respect to any petitions Ms Maree Garrigan said that *the General Manager would be made aware ...*

Although there was some variation in the expected process for handling petitions due to a lack of written guidelines, a Principal and school council were not expected to ignore or reject petitions, and to refer them to DET for a response to be made.

12.1.9.1 Humpty Doo Primary School

Petition

Complainant B said the petition signed by 24 families from Humpty Doo Primary School was presented to the school council. She said that the school council rejected the petition as the parents were not present to confirm they had a full understanding of what they signed. Although undated the petition was headed *We the undersigned parents of Humpty Doo Primary School children wish to have the Chaplaincy Programme removed from the primary school due to recent events in the Humpty Doo Community.*

Ms FH told my office she was unaware of any petitions *Not within Humpty Doo that I'm aware of. No-one came to me.* Complainant B said that the petition was presented during the school council meeting of 20 November 2007.⁸⁷ Ms FH was present at that meeting. The minutes, of the meeting contained no mention of the petition. It was noted that complainant B's suggestion to survey the parents was accepted with the stipulation *it has to have the right information on it about this issue.* Complainant A, who was present at the school council meeting held on 20 November 2007 told my Investigation Officer that a petition had been presented to that meeting. Complainant A recalled this meeting as Ms Roslyn McMillan and Mr Stuart McMillan were present in addition to DET staff members.

I am satisfied that a petition was presented to the school council whilst Ms FH was present and I cannot accept Ms FH was unaware of this petition. I understand that it is difficult to minute all things discussed during a meeting if several persons have been speaking at once

⁸⁷ Reference made in a letter addressed to Mr Graeme Cook DEEWR dated 2 March 2008.

but it is a reflection on the significance placed on the petition by the Chairperson of the school council and the Principal that such a pertinent item is missing from the minutes.⁸⁸

Mr Kevin Gillan and Mr Alan Green were unsure if they were aware of the Berry Springs Primary School or the Humpty Doo Primary School petitions. What they recalled was consistent with the Berry Springs Primary School's treatment of the petition issue. The agreement by the school council to undertake a school survey was in keeping with expectations of DET Executives.

Survey

Ms FH, Principal Humpty Doo Primary School, during her interview with my office about the school survey said that this had not been conducted prior to the submission of the funding application as:

Stuart had been coming more and more to the school, there had never been any complaints, the school council, I feel the school council felt that they didn't need to. I know that it says that in the initial guidelines, however, DEEWR did say that what we did was quite right and able to be done or else they would never have given us the money, if we didn't fulfil the conditions.

This statement demonstrates that the school considered DEEWR's funding conditions binding on the schools. But the schools were not party to the agreement with DEEWR. Ms FH, when asked by my office why the survey was conducted after the funding had been granted and the NSCP had commenced, replied:

When it became evident and there was complaints, then the school council felt, well, have we not seen what was happening and then they decided at the beginning of 2008 to do the survey and it was overwhelmingly in support of the program, so they felt that ... their decision was quite correct.

The parents in support of the chaplaincy service did not represent the majority of the school population; Ms FH explained that the response rates were generally very low. It was considered by the school council that 55 out of the 75 returned surveys was a good indication that the chaplaincy service was supported by the school community. As a result the chaplaincy service continued within Humpty Doo Primary School.

During an interview with complainant A she said she had not received a survey form and:

had actually contacted Margaret Banks and said, I didn't get one, what was going on, I didn't know that the survey had even gone out. The survey wasn't handed out to every parent in the school. When I went to the school, when I found out in the supermarket from another mother that she'd done hers and handed it in, I went to the school to ask for one and FH told me I couldn't have one. And I asked her, why not, and she said because they're all handed out amongst the teachers and they were individually numbered and I might photocopy them or something and hand it out. So I had to actually go and hunt through the scrap paper bin in my kid's classrooms and find a survey to hand in. And I was really upset... I approached the

⁸⁸ The statement provided by Ms FH within the DET response to the draft investigation report claimed that there was no petition and the numbers included within this report perhaps related to opt out letters. It should be noted that a copy of the petition was provided to my office with names and signatures of parents.

vice-chair of the council. I wasn't actually on council at that stage, and explained to her, I didn't get one. She said, oh no problem, I'm away to the office now, I'll discuss it with Felicity and it was dismissed again. So I ended up going, and as I say, hunting through the scrap paper bin and got my survey out and did it...

The complainant told my Investigation Officer that all the parents in her play group had not received a survey and had to go and ask for one.

Given the information about the survey process the validity of the results come under question. The schools were not provided with any guidelines by DET, or DEEWR, on conducting surveys. Generally in this case a survey form should have been developed by DET with instructions on how to distribute and collect it from parents.

Even without that guidance the school council or whoever distributed the surveys needed to explain their system for sending out survey forms.

The statement provided by Ms FH through the DET response to the draft investigation report stated:

In the front office one afternoon complainant A asked for a survey form because we were making announcements to parents and students to return them. Complainant A was told they were in the classrooms numbered as was required by school council and in accordance with procedure. Complainant A went to her daughter's classroom and received one which she filled in and returned to the front office I was told. The whole procedure was discussed at a school council meeting, with complainant A present.

No confirmation, denial or explanation was made in the DET response about whether or not some parents were not sent survey forms.

12.1.9.2 Berry Springs Primary School

Petition

Ms SD said that there had been a petition at her school about the chaplaincy service presented by a school council member, witness D. Ms SD said that the school council's:

view was that if we wanted to know whether ... parents didn't want permission for their children to be involved in the chaplaincy program they had to write individual letters themselves ... there were school council people who had been approached by witness D to sign it, he said they were put under pressure to sign.

As a result no action was taken with respect to the petition. Ms SD said that there was:

a special meeting of school council re the chaplaincy program...But school council at that meeting still wanted to go ahead with the chaplaincy service because they were of the view that it was of benefit to students in the school for parents that wanted it. It was always the view of the school council that its voluntary...

Witness D said to the Investigation Officer that prior to obtaining parent signatures she had the backing of Ms SD to measure support. Witness D said that she felt Ms SD had given her

the go ahead to obtain information however when she presented the petition it was rejected as it did not meet the requirements of the school council. Witness D was adamant during her interview with my office that she did not coerce anyone into signing the petition. A vote was taken by the school council about continuing the chaplaincy service. Witness D said that the majority of members supported the chaplaincy service. Witness D said that the school council then arranged to survey the parents. During an interview with Mr Alan Green, he vaguely recalled one of the schools contacting him to discuss a petition and alleged coercion. Mr Alan Green thought it could have been Humpty Doo Primary School. What he recalled was consistent with issues identified at Berry Springs Primary School. As Ms SD did contact the DET Executive to discuss the petition and the school council decision to measure support of the chaplaincy service through a survey, I consider the actions taken not to be inconsistent with the expectations of the DET Executive.

Survey

Witness F raised concerns about the survey conducted by the school as she said *the majority was against, even though there was an even number in the amount of children affected*. The statutory declaration signed by Ms SD confirms the majority of surveys returned were in support of the chaplaincy service ie. 16 to 9. The total responses may be considered relatively low however witness D said that *Berry Springs School has a really bad track record of surveys, so they send out one to every family but they get twelve back and stuff, so I think the results were very close but, say, under thirty, so they got, say, under thirty responses*. The surveys were distributed to all parents who were given the opportunity to support or not support the chaplaincy service.

12.1.9.3 Girraween Primary School

Petition

At her interview with my office Ms MB said that there had been a petition against the chaplaincy service *In the very first early days...* The petition was presented to the school council and had been dealt with through open conversation and decisions around the school changing some procedures. Ms MB said she thought the Girraween Primary School brochure relating to the NSCP was a result of that meeting.

Witness C said during her interview that she had initiated the petition. The witness told Ms Roslyn McMillan and Ms MB about the petition prior to presenting it to a school council meeting. The witness said:

When I went to the meeting to give them my petition they had also invited a lady who I cannot remember her name, but she was basically there to represent Ros and the chaplaincy program. So I suppose in one way they beat me too it...I always attended these meetings a little bit later due to personal commitments. What happened on that particular day was that this lady, was a spokesperson, very first on the agenda and just finished her little spiel to everybody when I walked in. So I felt very intimidated ...And what I wanted to make clear at the meeting was that I wasn't trying to stop the chaplaincy program, I was trying to stop the Uniting Church at Humpty Doo being our chaplain and I did bring in at that stage also the actual chaplaincy guidelines because I'd read through those and it clearly states that... for the chaplaincy program to be established you needed to have a need for it at the school...

Now, right at the very start, it was one of my first school council meetings I had ever attended, Ros came in ... She came to our school council meeting and said, you know, hello I'm Ros and are you aware that the government is funding a chaplaincy program and they basically pay for somebody like me to come in and to be a chaplain in your school. And of course everyone thought it may have been a good idea for the simple fact of one extra person in the office that can assist ... we could do it, thank you very much. And then she left. And then it was brought about ... And of course that's when I started questioning, hang on a minute, we haven't actually asked, we haven't sent out a newsletter... to everybody that attends our school that says do you want this, because when I read the guidelines it clearly stated that a majority of people wanted this kind of service... there was no consultation other than the meeting prior to that. And I had questioned, can we send out a letter, and it was squashed under the table ... and why would we bother sending out pamphlets when nobody responds to them... So it was all squashed under the table as it was completely irrelevant, we'd already said that we wanted it, so we're having it.

The witness said she asked the school council during the meeting:

can we look at somebody else doing it... chaplaincy program stays in place, let's change the chaplain...– don't be silly, there's nobody else that can do it and so again it was just squashed under the table. So I felt really betrayed by my school because I was a school councillor (sic), I was actually the person who seconded it in ... the original meeting because it was something so frivolous... But then the next meeting when I'm starting to question what I've actually brought in myself – too late, don't worry about it, it's too hard, it doesn't need to be addressed, this lady had assured us that Ros is a lovely lady ...

I agree with the witness that the NSCP guidelines and the procedures for DEEWR funding do not allow for chaplaincy services to be subject to normal procurement processes. The school makes the application to DEEWR after the school selects a chaplain. There is no transparency or merit based process selecting a chaplain. For each of the schools the subject of this investigation DEEWR pays \$20,000 per year over a three year period. The total paid to the recipient, the Uniting Church in Australia, Northern Synod for these schools is \$300,000 exclusive of GST. During this period the total paid by DEEWR nationally was a sum of \$151,235,687.24.⁸⁹

In questioning Mr Kevin Gillan, who was General Manager PARCS around the time of the petition, he was only aware of one petition which was not Girraween Primary School. In fact Mr Kevin Gillan stated during his interview with my office ... *its not the Principal's responsibility to respond to a petition, they would refer that on to their schools manager, so the Director, the Regional Director* (at the time this would have been the General Manager PARCS or above). Unlike the other two schools with petitions there was no follow up survey conducted at Girraween Primary School to validate or invalidate the petition submitted. On these two fronts Ms MB could be considered to have failed to meet the expectations of the DET executive, however it was not evident that she had full knowledge of what those expectations were as they were not in writing.

⁸⁹ <http://www.deewr.gov.au/Schooling/NationalSchoolChaplaincyProgram/Documents/Table.pdf>

It is clear that detailed guidelines around criteria for community consultation in addition to handling petitions should be developed by DET at a general level, given these issues have the potential to affect parents and schools.

Issue 2. Informed consent and monitoring of consent for services provided under NSCP and pre-NSCP chaplaincy services to students

Prior to the 2009 policy and guidelines on chaplaincy services and the NSCP, the *Guidelines for Chaplaincies in Northern Territory Government Schools 2004* were the guidelines regulating chaplaincy services. Those guidelines did not specify requirements for parental consent. The DET policy at the time, applicable to consent, was *Principles for Dealing with Controversial Issues in Schools*⁹⁰. It would be fair to describe what occurred over the chaplains' services, the subject of complaints, that it was a controversial issue. Requirements within the policy stipulated:

The school has a responsibility to inform parents, prior to the occasion, of the specific details of the program. This allows parents to exercise their rights of withdrawing their children from a particular session or sessions on certain controversial issues. In this regard a parent's wishes must be respected.

DET's response to the draft investigation report stated that the *Principles for Dealing with Controversial Issues in Schools* was not relevant to informed consent for the provision of chaplaincy services. Whether that is so or not DET should review these principles and clearly define their scope of operation.

After the implementation of the NSCP, Mr Kevin Gillan as Executive Director, Schools North issued a document dated April 18, 2008 with *General Findings and Recommendations* as a result of Mr Roger Newman's investigation. The document was provided to Principals and stipulated:

...that schools operate NSCP as an 'opt in' program. Parents are to receive written information in relation to the activities of the NSCP in the school and will be required to provide a signed and dated letter of approval for each of their children to participate in the program and organised activities on an annual basis.

The requirements of DEEWR in relation to the NSCP were set out in an email from the department⁹¹ to a concerned parent:

it is the responsibility of the schools to make decisions about ..issues regarding parental consent....

The NSCP Guidelines clause 5.1 stated:

Parents/caregivers must be provided with information about the availability of chaplaincy services in their school...which emphasises the voluntary nature of the Programme and explains that members of the school community – students, staff and parents – do not have to participate in this service.

A further provision of the NSCP Guidelines may be found under the Code of Conduct for school chaplains, clause 2:

The school chaplain will...Respect the rights of parents/guardians to ensure the religious and moral education of their children is in line with their own convictions.

⁹⁰ Update 1998.

⁹¹ schoolchaplaincy@deewr.gov.au

It may be considered implied within these provisions there was a requirement to provide parents/caregivers accurate information on the services and establish parents/guardians religious and moral convictions. It is clear that a level of informed parental consent is required for students to participate in the NSCP.

12.2.1 Opt in Opt out

Prior to the release of the *General Findings and Recommendations* two systems of consent were operating within the schools considered by this investigation. The two systems were opt in and opt out. The first of these systems ‘opt in’ required parents/guardians to provide consent prior to obtaining a chaplaincy service. The second related to ‘opt out’ which required parents to express their objection to the chaplaincy service being provided to their child otherwise their child would receive the service. To assist in this investigation each of the School Principals investigated were provided with the table below and requested to complete and return it with a signed statutory declaration.

Name of student	Name of parent/guardian who provided permission	Was permission verbal or written?	What date/s was permission provided by parent/guardian?	Type of chaplaincy service permission was provided for.

12.2.1.1 Taminmin High School

Prior to the *General Findings and Recommendations* document Taminmin High School adopted an ‘opt out’ system of consent. Mr AC, Principal Taminmin High School, said during his interview with my office:

Initially when there were concerns we received some notifications from parents about not being part of the system, so we noted those and kept those on file together when they came in and made sure that the chaplains were aware not to have contact with those children.

A letter dated 19 June 2008 from Mr AC was sent to all parents with their children’s school reports advising the chaplaincy service would be conducted as an ‘opt in’ service. The letter was dated after the date of Mr Kevin Gillan’s recommendations, which required written consent for **all** chaplaincy services. The letter from Mr AC identified services and duties undertaken by the chaplain/s that did not require specific permission. These services included and were further described by the Principal during his interview on 18 August 2009 as:

Critical incident. *So if we have a critical incident, and our major critical incident is where a student has passed away or a student’s parent has passed away, these people help us to man centres where students can come to. We certainly use them in critical incidents like that. There’s sort of support here to management and classroom teachers. Individualised community support and that would be where... the line of chaplains and the greater pastoral care role of the pastor in the community comes out where they may go out and speak to parents.*

*And with our **pastoral care groupings**, so the pastoral care that we have in schools where they may attend a pastoral care grouping in the school but not run it, all be it the teachers are the person in charge to attend those things.....Pastoral care in an*

educational context, and within our school, is where we're running a session, maybe on goal setting or things like that, a whole range of developmental processes run within the school and collectively known as the subject pastoral care.

In relation to the chaplains being in there assisting with pastoral care with our teachers I haven't had any further complaint or issue with that and I don't see it as particularly any different to if I've got the local doctor or policeman or someone from Centrecare or someone in there doing it. And we frequently have visitors talking to classes, you know, from local politicians to people from Ruby Gaea and different things like that.

Mr AC told my Investigation Officer he obtained approval from the General Manager PARCS, Ms Noelene McCormack. Ms Noelene McCormack was seconded from DET and so the claim could not be verified, however I have no reason to doubt Mr AC on this particular claim.

Mr Stuart McMillan on 23 July 2009 described a different understanding of pastoral care and said:

*Generally in the pastoral care situations it is the child that has asked to see you so if it's a child that I didn't know then I would be seeking to establish some relationship obviously, so that the child would feel comfortable and able to have a talk, able to trust me. So, you know, all those general relational type things that one might ask like... what do they enjoy doing, what sort of day have they had ..etc. ... And you know getting to whatever the presenting issue might be, whether that child's either come directly to see us or come via a school teacher. In the primary schools generally via a teacher or the office and **in the high school they can come direct if they so choose, they are a little bit older.***

Mr AC said that with one-on-one chaplaincy services students: *must have a permission for every contact* and there:

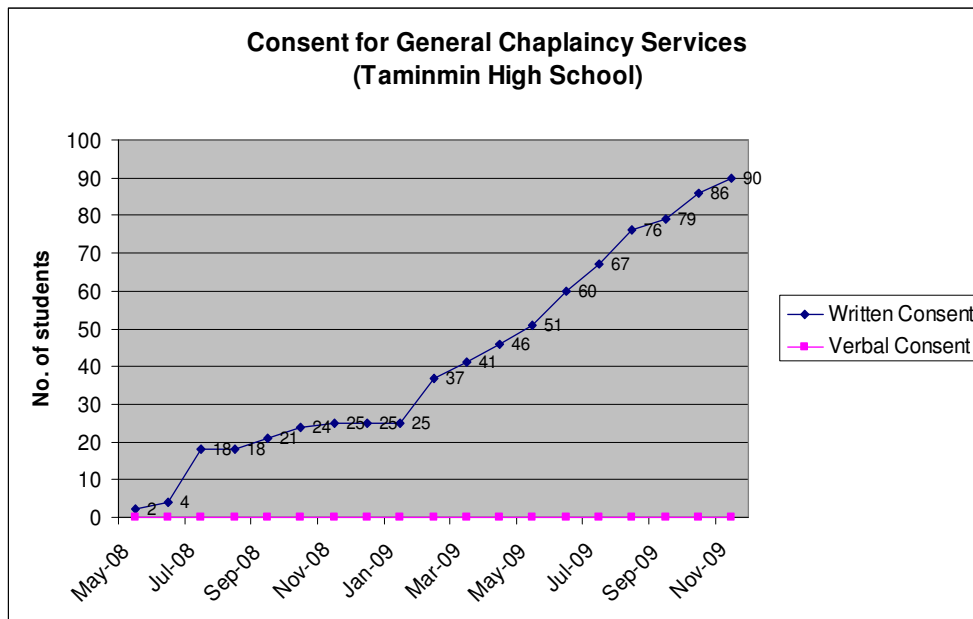
had to be a specific permission, that we had a record of that permission that was easily accessible. The reporting process was for the chaplains to make sure that they had a permission to talk to that student. If a student had come to them wishing to talk then they had to get a permission on a one-on-one before that happened.... Do I believe that a child may walk past Stuart and say, how are you Stuart, how you going, whatever, yes I do. Do I believe a child would go in and have an in depth conversation one-on-one with him without permission, no I don't.

Ms MM Assistant Principal of the Middle School said a pack, which includes a consent form for the chaplaincy services, is sent to parents at the commencement of the year or on commencement at the school. Ms MM said she was unaware of any one-on-one sessions prior to the NSCP, however sessions provided under the NSCP have been provided with permission. One-on-one sessions will be discussed further under Issue 4 *Services provided by chaplain/s.*

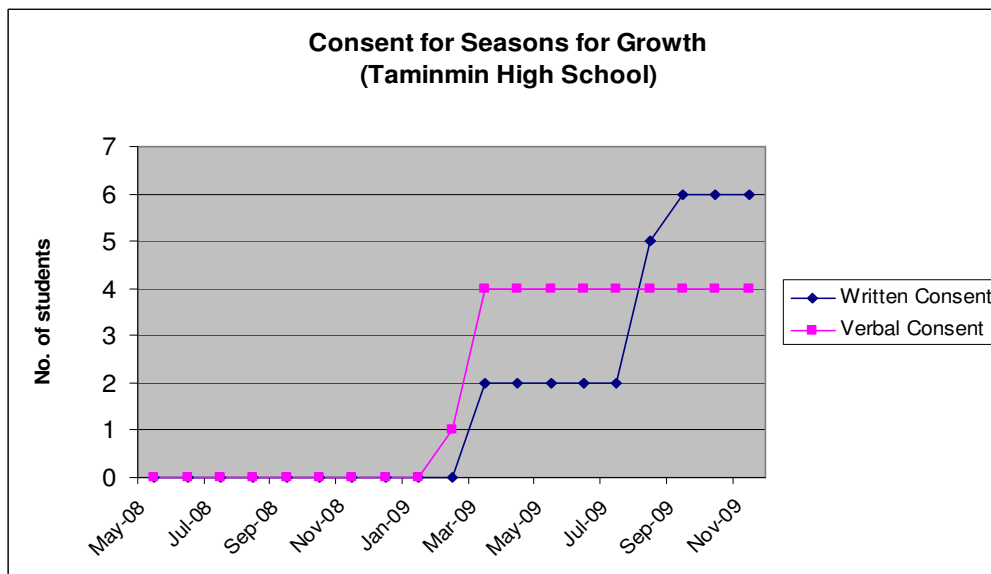
Ms RM, Assistant Principal Senior School said the senior school only utilised the group sessions and only with parental consent.

The consent table endorsed by Mr AC shows that written consent commenced around July 2008 for 'general' chaplaincy services, with the exception of four students who provided written consent around May and June 2008. The student numbers on the graphs are cumulative as at the specified period of time. For the purposes of this report 2009 has

carried on from 2008 whereas in actual fact the consents are annual and so should commence at the start of each year.



Consent details were also provided for students attending the Seasons for Growth sessions at Taminmin High School. At the commencement of 2009 it was clear in the graph below that consent was obtained verbally for four students, contrary to the directions issued by Mr Kevin Gillan, which required **written** consent for all chaplaincy services.



Mr Jason Purugganan’s diary and student notes identified that some Middle School students had received one-on-one services but were not listed in the table provided by the school as having parental/guardian permission. One of the student notes recorded an half hour pastoral conversation on 10 June 2009 and noted:

Actions:... Send permission form for...’s parents to sign.

The notes stated that Mr Jason Purugganan had touched base with Ms MM and she was happy for him to continue with the child, however there was no evidence to suggest permission was discussed. Further one-on-one sessions were conducted with the same child on 17 June 2009 and 22 July 2009, still without consent. What this highlights is a failure by the chaplain and school to obtain and confirm parental/guardian consent prior to the one-

on-one session. There may have been a process in place for obtaining consent but no one in the school assumed a monitoring responsibility. As Mr Jason Purugganan was very aware that parental permission was required, he breached Mr Kevin Gillan’s directives of April 2008 which is considered a breach of the NSCP guidelines.

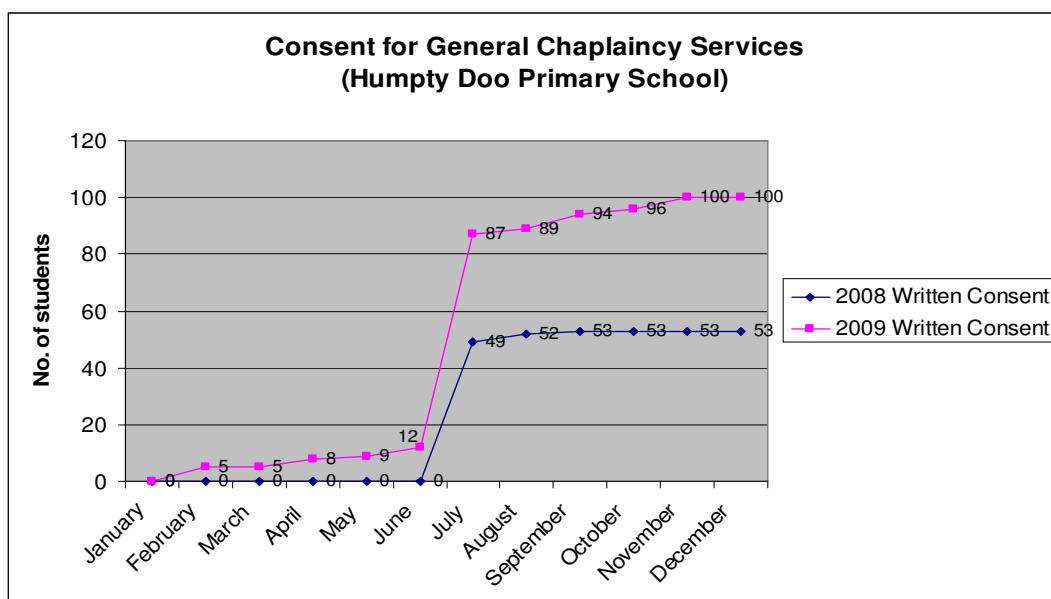
Mr AC was asked about a comment made to complainant A, that he would give chaplains access to students as volunteers if he was unable to get them access as chaplains. He said he did not recall such a conversation, however did recall *a conversation along the lines that previous to this service these people were volunteers in our school*. Mr AC was quite adamant he would not have made such a comment as he considered it a bullying technique.

There is insufficient evidence to support that Mr AC made the statement.

12.2.1.2 Humpty Doo Primary School

Prior to the *General Findings and Recommendations* by Mr Kevin Gillan, Humpty Doo Primary School operated within an opt in system based on verbal consent. When Ms FH was asked about the documenting of verbal consent she said *I’m not sure, the Assistant Principal was involved a lot in that*. As the Assistant Principal was Ms CE who is no longer with Humpty Doo Primary School, Ms FH’s claim could not be verified. I find it difficult to accept that as the Principal Ms FH absolved herself of any responsibility with respect to parental/guardian consents and their procedures.⁹² The consent table provided by the Acting Principal Humpty Doo Primary School Mr ES included 2008 and 2009 only, with no record of 2007 or earlier. It was unlikely that the verbal consents were documented and it would have been very unlikely they were monitored. In the absence of documented verbal consents there was no evidence to support what parents/guardians had consented to. The services provided within Humpty Doo Primary School prior to the commencement of the NSCP included critical incidents assistance and one-on-one sessions.

From the graph below it was evident that following the directives by Mr Kevin Gillan, written consent was obtained from July 2008 onwards for general chaplaincy services. Verbal consent was not included within the graph below as there were nil following July 2008.



⁹² The statement provided by Ms FH through the DET response to the draft investigation report advised ‘ ..In the interview I didn’t absolve myself from responsibility however Ms CE’s role was Student Services and Wellbeing which included the monitoring of students that were engaged with the HDPS Wellbeing Team... Carolyn at all times kept me informed of issues that arose and concerns she had.’

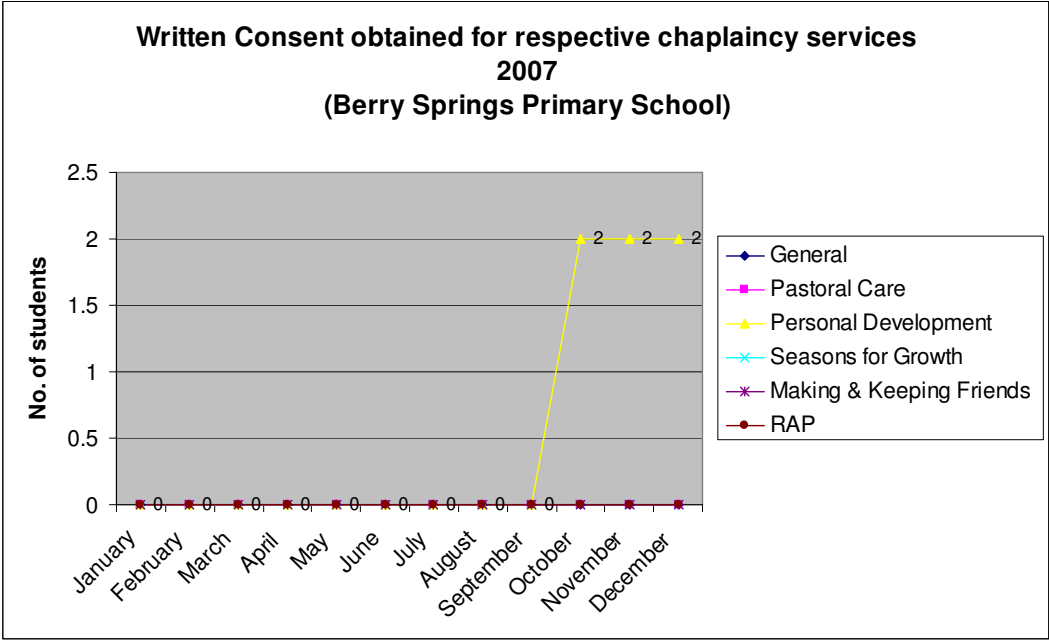
In addition to the above general consents there was one written consent obtained in November 2009 for 'Specific Behaviour'. This will be discussed further under Issue 4 Services provided by the chaplain/s.

It appeared from the information above that procedures for obtaining and monitoring parental/guardian consent were inappropriate prior to Mr Kevin Gillan's directive dated April 2008. Commencing July 2008 written consents were obtained and recorded electronically within the SAMS.

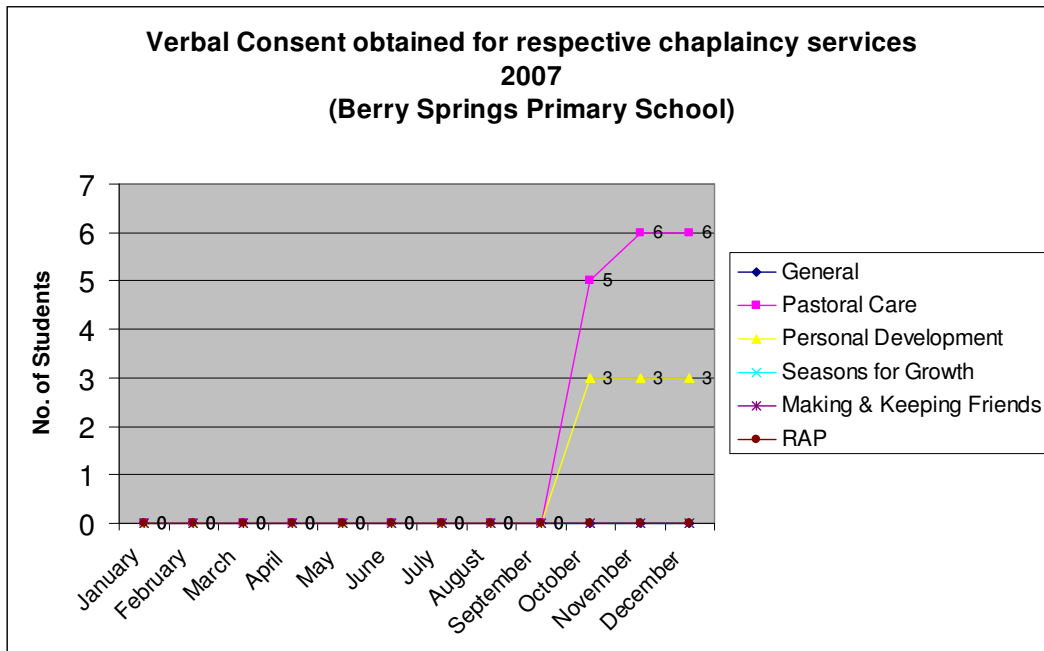
Mr Stuart McMillan's note book titled *2007 HDPS small amount 2008*, identified one student as having a one-on-one session without being recorded on the consent table. This was quite concerning given the nature of what was recorded for that particular student. This has been discussed further under Issue 4 Services provided by the chaplain/s.

12.2.1.3 Berry Springs Primary School

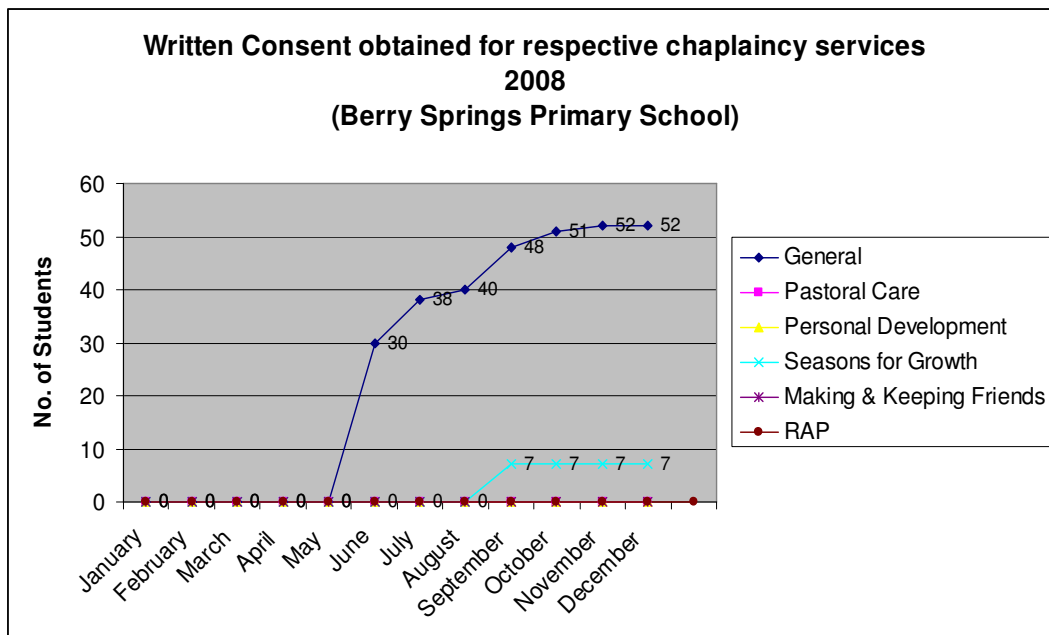
Services provided by the chaplain/s prior to the commencement of the NSCP extended to the Kids Club, which is considered further under section 12.2.3. In reviewing parental/guardian consent the following graphs demonstrate the type of consent obtained. The NSCP became effective on 28 September 2007 with two written consents obtained in October 2007 for Personal Development.



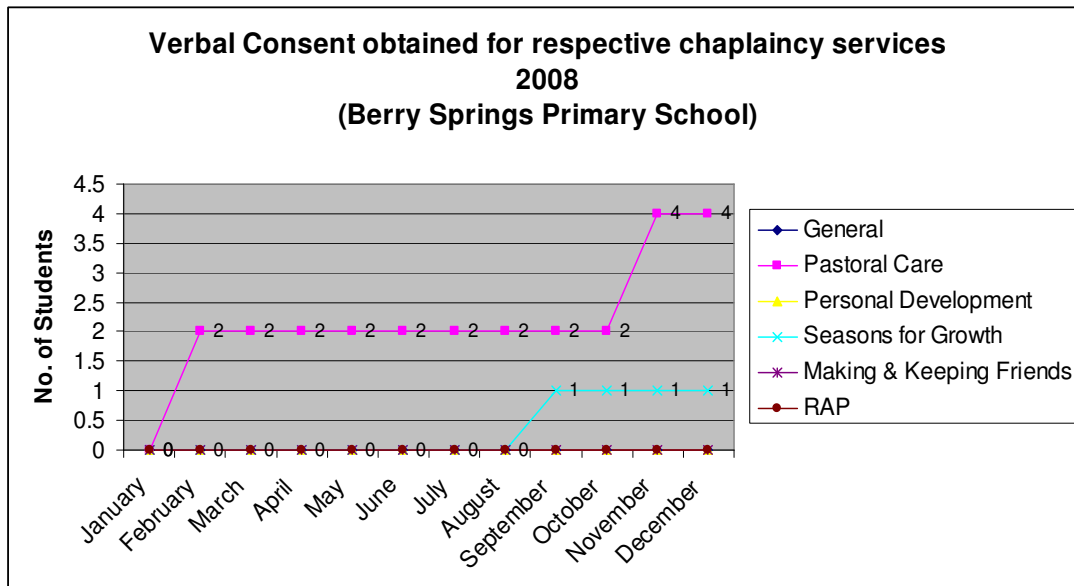
A total of nine consents were accepted verbally for pastoral care and personal development services provided by the chaplain in late 2007. Although these consents were obtained verbally sufficient details have been provided by Ms SD to suggest appropriate monitoring was in place.



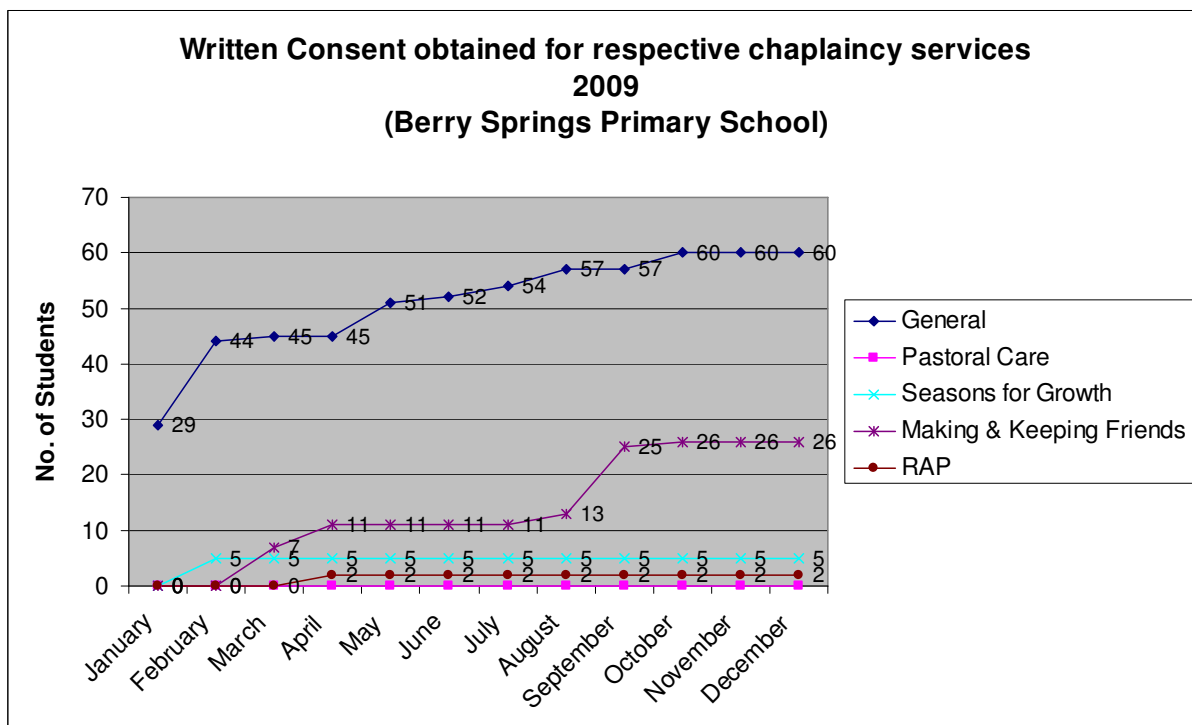
Ms SD, Principal, told my office that more current practices involved students being provided with a letter and consent form each year. New students have the information and consent form included within their enrolment pack. The information returned is then entered onto the SAMS to allow for monitoring of students that have consent and those that do not wish to participate within the chaplaincy services. The following graphs depict the consents obtained for 2008 and 2009.



Three verbal consents were accepted following the directives issued by Mr Kevin Gillan. Of these one of the students did have a general consent to participate in chaplaincy services.



In considering the 2009 consents there were nil verbal, the graph below depicts the nature of the written consents obtained.



Ms Roslyn McMillan’s students records were supportive that all students provided with one-on-one sessions were recorded on the consent table provided by Berry Springs Primary School. However in examining the material used within the one-on-one sessions it was identified that one male student in 2007, following the commencement of the NSCP, was completing a booklet with Ms Roslyn McMillan. The booklet appeared to be geared towards self esteem however was produced by Focus on the Family and contained many religious references and scriptures. Examples of this were:

You are made in God’s image... God has given you... But God himself oversaw your creation... Believe that God cares... For we are God’s workmanship, created in Christ Jesus to do good works, which God prepared...God has dreams for your future; why not join Him by allowing yourself to think big?...

Readings from the Ephesians, Philippians, Matthew, Luke, etc were also included within the booklet. As the student was completing the booklet it cannot be argued that this information was not made available to him. The parental/guardian consent obtained extended to pastoral care. As there was no record indicating consent for religion to be included within these sessions it can only be concluded this was not obtained. As clause 2 of the NSCP Code of Conduct for the chaplains required the chaplains to respect the religious beliefs of the respective parents, without consent this clause is considered to have been breached.

12.2.1.4 Bees Creek Primary School

Bees Creek Primary School commenced providing chaplaincy services under the NSCP around October 2007. Prior to the introduction of the NSCP there were no chaplaincy services provided to the school. Mr JT, Principal, stated in a document titled *Ombudsman Permission Report Dec 09* provided to my office that no:

permission was required at that point the program was clearly described as a non-religious, pastoral care support program and an open door policy maintained for any parent concerns or requests to opt out. After suspension of the program in March 2008 and ...the reinstatement memo... in April 2008, permission was sought and recorded to fulfil the opt-in requirement. Mr JT stated in the document that permission was noted in the first instance and a verbally recorded note in the second. A letter was sent home explaining the program to Parents and requesting a Yes/No permission be circled, signed and dated.

The consent obtained was recorded on SAMS and updated lists of students with permission were printed and provided to the chaplain weekly. It was further stated in the document that if no form was returned then a verbal yes/no was sought by the school and recorded on the student's file. Mr JT told my Investigation Officer that permissions were reviewed annually. In total, Mr JT said 296 students had provided parental/guardian permission to participate within the chaplaincy services in 2008 and 2009 following Mr Kevin Gillan's directive in April 2008 requiring written permission.

Mr Jason Purugganan's diary notes kept for 2007 and 2008 established that he was quite a meticulous record keeper. So much so that on Tuesday 13 November 2007 whilst providing a chaplaincy service to Bees Creek Primary School through the NSCP, notes were made about two female students that approached Mr Jason Purugganan to ask religious questions. There were no notes to suggest Mr Jason Purugganan had made enquiries with respect to parental beliefs, obtaining consent nor discussing this with the Principal or other school staff. The notes appeared contemporaneous and recorded the following:

1) It is sort of weird that we've come from one parent/race Adam and Eve?

Response (R): *The Bible says that God put a mark upon Cain so that when he travels/joins people they will recognise him and not to lay their hand upon him because anyone who does will be punished severely. This shows the possibility of other created people aside from Adam and Eve.*

2) Why does Jesus need to be crucified?

R: *During the old testament, a priest has to offer a sacrifice over and over for the forgiveness of people's sins. Jesus had to die on the cross for our sins to be forgiven once and for all – through the shed blood of Jesus.*

3) *Why don't we have a goddess?*

R: *We have males and females and using our human brain it is hard to understand why we only have a God and not Goddess. But, God says his thoughts and ways are higher than ours.*

4) *Why does Christianity only have one God? When religions have more than one God?*

R: *There is one God, 3 persons – the Father, the Son, and the Holy Spirit. Three persons but they are one. Christian people only have one God but God says He is a jealous God. He wants us to worship and serve Him alone?*

5) *Why do we have bunny rabbits on Easter and x'mas tree at x'mas time?*

They are paganistic in nature?

R: *At Easter time, I focus on the fact that Jesus died, was buried and after 3 days he rose again. And by his death, that broken relationship with the father has been restored.*

Mr Jason Purugganan signed the NSCP Code of Conduct prior to this incident as confirmed in his diary notes on 16 October 2007. Mr Jason Purugganan did not have parental consent nor would he have been familiar with the family religious beliefs. These actions are considered inconsistent with clause 2 of the Code of Conduct. Mr JT, Principal Bees Creek Primary School said:

Any activity that has a religious connotation is checked out with the parent first or the parent may be questioned, or the child may request it and then before Jason would proceed with anything of a religious nature he or we would contact the parents and say, look the child's up and wants to know about Christmas, wants to know about Easter and particularly about Jesus dying on the cross, we cannot proceed with this you need to talk to your child. And the school council have been very strong that that will be the role of the chaplain, it would be a pastoral care supportive role rather than a religious role in the school. So that's the way we handle it.

Mr Jason Purugganan's notes confirmed that on 13 August 2008 Mr JT clarified some issues on procedure with him. The chaplain recorded in his notes that if a distraught child approached him, even with consent, he would have to refer the child to the Principal or Assistant Principal. If the incident was critical, and presented an immediate danger, then the chaplain could offer immediate assistance. Mr Jason Purugganan also noted that he could work in classes but not to assist children without permission. Also if the chaplain was running a program such as Room 14 or one that was religious, parents would have to be informed in writing by the class teacher.

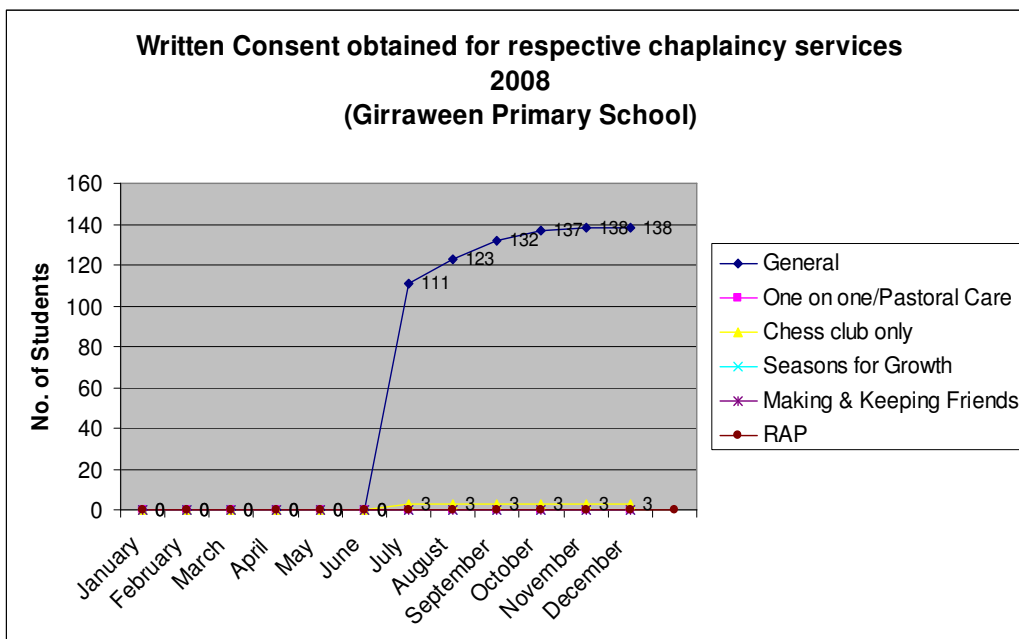
Contrary to directives by Mr JT, on 9 September 2008 Mr Jason Purugganan engaged in a pastoral conversation with a male student. Mr JT confirmed this student did not have parental/guardian consent, in fact he had a 'NO' recorded against his name on the schools hard copy list. Mr Jason Purugganan engaged with this student and discussed feelings, strategies, adults the child could talk to and future assistance in setting up for the chess club. It is considered that Mr Jason Purugganan failed to comply with the directives of Mr Kevin Gillan and instructions provided by Mr JT, therefore acting inconsistently with the NSCP Guidelines.

12.2.1.5 Girraween Primary School

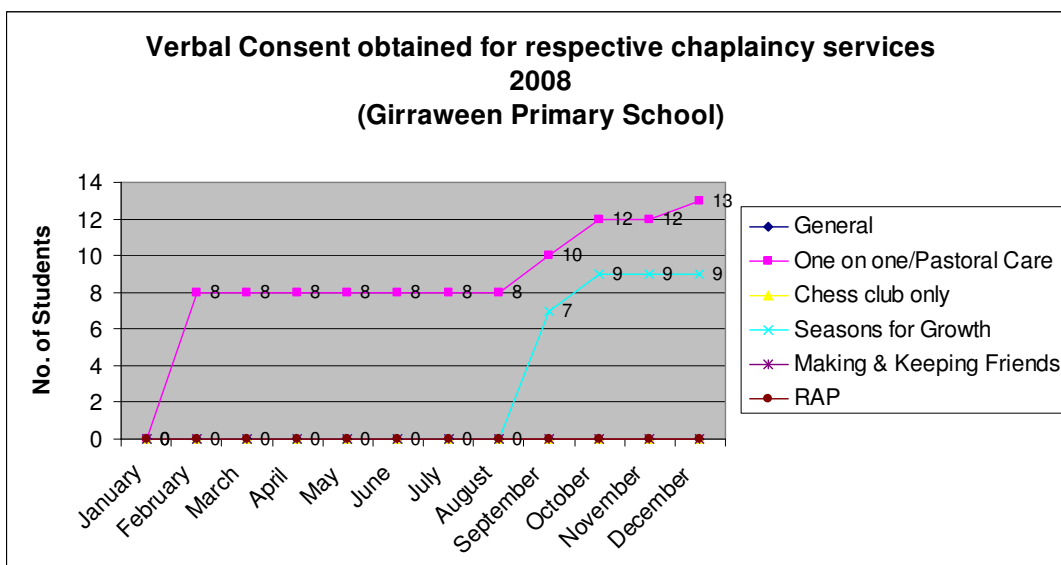
Ms MB, Principal told my Investigation Officer:

... a new parent coming in at school, they get a copy of this in the enrolment pack with the consent form. I interview all parents, new parents, or my Assistant Principal does it if I'm not available, at which time I talk about the fact that we do have a chaplaincy program and how it runs and what its about. Then parents will either sign it or not sign it or take it away and think about it... And when that information comes back it is recorded by my administration staff in the student management system and the hard copies are kept in my, in a file in my office. And then I provide to the chaplains the lists.

If forms are not returned Ms MB said they were not followed up unless there was a need in which case she would contact the parents/guardians.

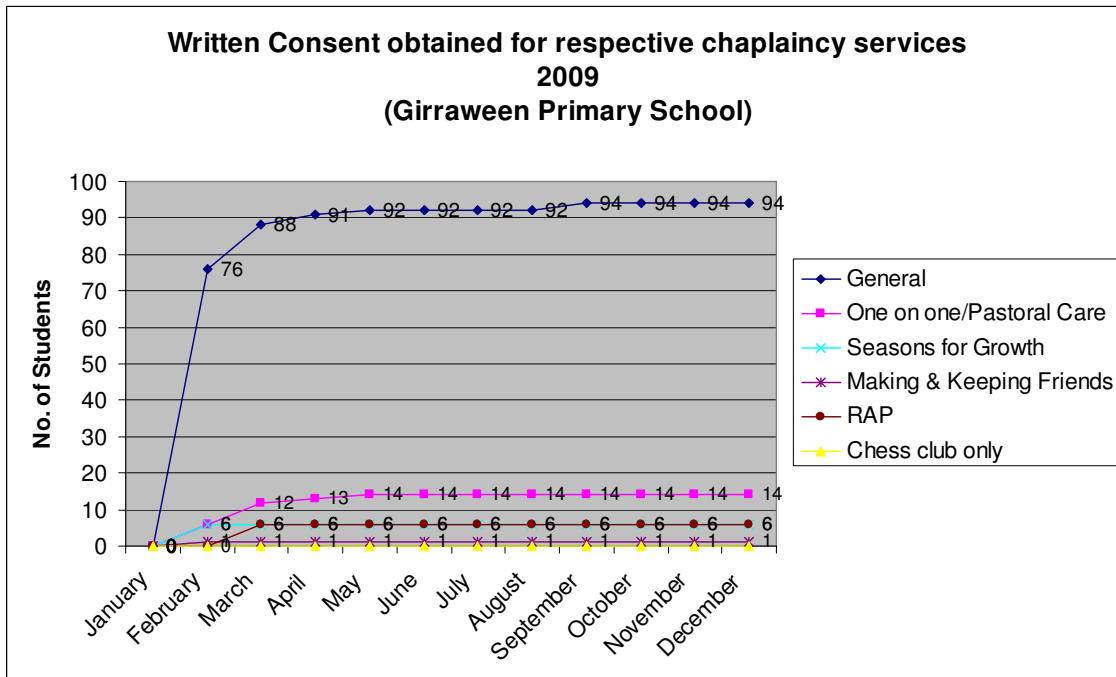


The consent information provided by Ms MB shows that all general consents were provided in writing for 2008, however some of these were provided verbally over the phone and then recorded. The graph below revealed the number of verbal consents obtained during 2008 for one-on-one sessions and Seasons for Growth sessions.

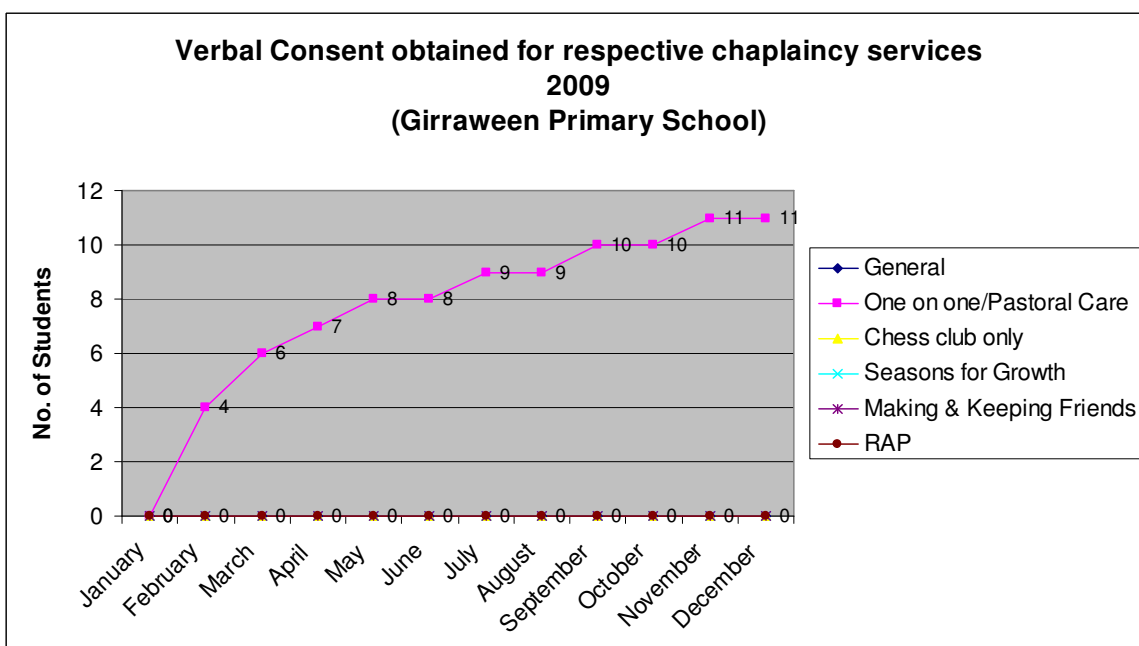


After Mr Kevin Gillan’s directive in April 2008 students receiving one-on-one sessions and Seasons for Growth sessions also had general written consent, with the exception of one child.

In 2009 it appeared that written consent was obtained across all chaplaincy services provided to students. Even so verbal consent was still accepted for one-on-one sessions.



The details provided by Ms MB in relation to the 2009 verbal consents revealed that some children were provided with one-on-one sessions prior to obtaining any type of **written** consent contrary to Mr Kevin Gillan’s directive in 2008.



What was most concerning was the fact that one child received a one-on-one session in 2009 with the chaplain prior to having any **written or verbal** consent from a parent/guardian.

Ms Roslyn McMillan's students records for one-on-one sessions identified that two students commenced in 2007 at Girraween Primary School. For one of these students verbal parental/guardian consent was obtained for the one-on-one sessions in 2008 and there was written permission for general chaplaincy services. However it was not clear within the records whether consent had been obtained for religious discussions. The notes recorded:

...Knows nothing about God. Talked about Father God, Jesus, Holy Sp. – cares for people – can help when angry, impatient...

As the student knew nothing about God if parental/guardian consent had not been obtained for religion then it could be considered that the chaplain acted inconsistently with the NSCP Guidelines. The Code of Conduct for school chaplains, clause 2 states *The school chaplain will...Respect the rights of parents/guardians to ensure the religious and moral education of their children is in line with their own convictions.*

Another child identified in Ms Roslyn McMillan's records for 2009 was listed as having written consent, however it is unlikely this extended to their discussion on the difference between Satan and Jesus. As discussed in the previous paragraph if parental/guardian consent had not been obtained prior to the religious discussion it would not be possible for the chaplain to be compliant with clause 2 of the NSCP Code of Conduct.

12.2.2 Child X

Child X is the son of complainant C. The issues addressed within this section of the report relate specifically to informed consent. The services provided to child X were towards the end of 2007 prior to the commencement of the NSCP. The NSCP Guidelines did not apply and due to the limited policy through DET there were no specific requirements for consent other than for controversial issues. As a result one must turn to a teacher's non-delegable duty of care⁹³, which confirmed a teacher's inability to pass on their responsibility for the care and safety of a child to another person such as a contractor; in this case the chaplain. It is on this basis parental consent is required for activities outside of the core curricula. To obtain verbal consent from a parent or guardian particularly for one-on-one sessions leaves the schools without any written evidence as to what has been consented to. In the case of child X this is exactly what happened.

Ms FH as the Principal of Humpty Doo Primary School introduced complainant C and her husband to Mr Stuart McMillan during a meeting held to address their son's alleged bullying within the school. Complainant C told my Investigation Officer she provided consent for Mr Stuart McMillan to provide services to her son under the belief that he was a counsellor.

Mr Stuart McMillan said he believed he explained his role:

I advised that I was involved in pastoral care, we talked about things like resilience, understanding feelings, social connections and some anger management were a range of things that we talked about in that meeting. I have never advised a parent that I'm a counsellor...at that point I wasn't referred to as chaplain because the chaplaincy program hadn't started. Most of the young kids knew me as Pastor Stuart. I can only say that I did advise them... that if professional counselling was necessary in my opinion that I would get back to them and let them know and that

⁹³ *New South Wales v Lepore* (2003) HCA 4.

we would be talking and looking at things in that range of areas around resilience, understanding feelings, social connections, anger management.

In reviewing Mr Stuart McMillan's diary notes the meeting was confirmed on 27 August 2007 and recorded:

talk to him (ie. child X). Threat of knife against B.... copy of letter.

Ms FH told my office that she, the Assistant Principal, two classroom teachers, complainant C and her husband were present at the meeting on 27 August 2007. Complainant C provided a letter to all in attendance outlining her concerns. Ms FH said that the letter was seeking a counsellor or support for child X, however said she explained:

the only access to a counsellor that a primary school has is through the high school and we had other children with sort of like triage in the hospital, we had children who's parents were in jail, we had children who's parents had died, we had, you know, and in that situation the counsellor allots their time and we knew that, while we could talk to the counsellor about it, it would be down on the list, so we went for the or. And so I had to go to another meeting and so I was going through my head, what can I provide these parents because they were obviously in great need ...I walked out to the other meeting and Stuart just happened to be going past. And of course we'd had success with that before, so I sort of said, oh Stuart, do you want to come and meet with these parents. And so he said, oh yes. So he went into the office and I believe Graeme introduced him and said, you know, he's a pastor and all the rest of it and there's pastoral care.

Ms FH said when complainant C opted out of the chaplaincy service her letter acknowledged withdrawal of given permission. However it was still unclear as to what the permission was provided for. Ms FH left the meeting of 27 August 2007 so she referred my office to Mr GM, Assistant Principal to answer further questions given he remained in that meeting.

Mr GM could not recall the incident with child X, however very vaguely recalled a meeting with complainant C, her husband and Mr Stuart McMillan. Mr GM told my office:

...we always introduced Stuart as was appropriate to his role...as a support mechanism if they chose to use it... to support them and to support their child and to support the school...

Ms JW, child X's teacher, said that child X was *...a high profile behaviour student...* She said that minutes were kept for the meeting of 27 August 2007, however she was unable to locate these. Ms JW's recollection of the meeting was that child X had anger management issues and was unable to assist with information relating to the introduction of Mr Stuart McMillan to complainant C and her husband.

Minutes of the meeting held on 27 August 2007 were recorded by complainant C and provided to my office. There is no reason to believe the minutes were not an accurate account, particularly due to the level of detail and parts being confirmed by others present. The paragraph that interested me most in relation to this issue stated:

Spoke with Stuart, advised him that we did not want any religion addressed with child X, GM explained to us that Stuart is a professional and can differentiate

between his two roles. He will be counselling child X and report back to us how things are going.

The minutes also noted the two classroom teachers leaving 25 minutes into the meeting as the bell had rung. Ms FH's departure however was recorded as:

felicity did not even mention that she was leaving the meeting, GM stayed to the very end of the meeting and was really helpful.

Although complainant C was aware that Mr Stuart McMillan was a pastor she said she still believed her son was receiving services from a counsellor and relied on the statement by Mr GM. Complainant C asked why would she send her child to a chaplain if he was having serious behavioural problems.

As there was no written consent I can only seek to rely on the evidence and conclude that the argument and evidence provided by complainant C was persuasive. It would be reasonable to conclude that the school had not obtained the appropriate informed consent from child X's parents.

12.2.3 Kids Club

Both Berry Springs Primary School and Girraween Primary School operated the Kids Club dating back to 2004 through Ms Roslyn McMillan. Initially the two schools permitted religion to be included within the clubs. Ms SD said:

The kids club was for children at lunch time just to come in and attend and its always been the case that they needed permission to do it, but you used to get kids who'd just drop in for something to do. It was another avenue for them at lunch time.... It was done under the RE program... the RE program did require children to have permission to attend... that was written permission..

Ms SD said that some parents did provide verbal consent however it was usually written consent:

Well its on the enrolment form, that's where it is ... when they come in if they're allowed to take part in religious education.

If the children weren't interested the parents would then write a letter and the child would be taken out of the class⁹⁴. Following Mr Roger Newman's investigation, Ms SD requested Ms Roslyn McMillan remove all religious references from the Kids Club leaving it as an arts/craft lunch time activity. From this point in time written consent forms were developed and used for Kids Club.

Ms MB said the Kids Club operated at Girraween Primary School:

It's really a sort of ... fun craft activity with a smattering of Christianity.

Ms MB confirmed that there was religious education provided within the club, however:

...only children went to that program with specific written permission from their parents.

⁹⁴ In accordance with sections 72 and 23(2)(a) *Education Act* and the DET Policy on Religious Instruction last updated in 2002, times of religious instruction are left to the discretion of the principal.

Written permission for the club had been obtained by the school even prior to the commencement of the NSCP. Ms MB provided extensive documentation to support this. It should be noted that even following the commencement of the NSCP the religious component of the Kids Club continued.

Mr Kevin Gillan's told my office:

I would want to know whether the parents have provided.. their informed consent in relation to this. Kids club, if its not a formal religious education program then they shouldn't be basically teaching any religious instruction ... unless parents are really informed as to.. what the content of the program is and they've provided their signed off consent...

In examining the content of the consent forms used by Girraween Primary School the following table provides extracts describing the religious component:

Year	Extract
2006	<i>All activities are oriented towards Christian principles and beliefs. Children who are interested in exploring more of the Christian faith can ask questions and have them answered during the Kids Club.</i>
2007	<i>The program is based on Christian values..... Last semester, for example, Kids Club members were able toplay games and pray together.</i>
2008	<i>The program is based on Christian values..... In the past, Kids Club members were able toplay games and pray together.</i>
2009	<i>Kids Club is based on Christian values... We also encourage the children to participate in prayer at the end of each Kids Club.</i>

Ms MB provided my office with all the signed consent forms dating back to 2006. Eight families were randomly selected from each year and asked about their understanding of the consent forms. Two families responded, both not fully supportive of the religious activities. One respondent stated *Kids attend these for the group activities not the religious activities...* The other respondent ticked 'no' with respect to providing consent for *religious instruction* and *saying prayers*. From this small return it can not be concluded that families did not understand what they were signing. What is demonstrated is the consent forms do require a lot more clarity with respect to any religious content.

12.2.4 No apology video

Complainant A said the chaplains were showing the video 'No apologies' to students at Taminmin High School without proper consent.

No Apologies – the truth about life, love and sex... is a character-based sexual health curriculum that brings a fresh message of hope to a generation who are seeing an increasing rate of teen pregnancy, abortion, single parent households

*and divorce. It helps adolescents identify the harmful effects associated with premarital sexual activity.*⁹⁵

The video sessions include:

1. The video
2. Healthy relationships
3. Media Literacy
4. Pre-marital sex and consequences
5. HIV/AIDS: A generation at risk
6. Abstinence works every time
7. Marriage matter

The two Assistant Principals at Taminmin High School, Ms RM, Senior School and Ms MM, Middle School were not fully aware of the video. Ms MM had a vague knowledge of the video and asked my office if it was the one about *saying no to sex*. She had heard of it but not seen it. Ms MM was not aware if the chaplains had shown the video but believed it could have been the health coordinator or school nurse and commented:

a teacher wouldn't do anything like that in a classroom unless it had been checked out.

Mr AC, Principal Taminmin High School said:

The video I think was used around lifestyle choices and I think there was an objection because...it was I think a USA produced video, if I've got the right one. And it could have been tracked to a Christian organisation, I think. I think there was a fairly well known footballer or sports person on...

When asked who owned the video Mr AC believed it was the school's *Phys Ed Department or our library*. He went on to say:

Did I actually read the box and what was in there, yes I did. Did I sit down and watch the video, the thing myself, no I didn't.

When asked whether the chaplains showed the film to the students, Mr AC confirmed the video was shown to the students however believed it was shown in the Phys Ed classes to promote discussion. On my Investigation Officer attempting to obtain a copy of the video for viewing, Mr AC said *I have checked our catalogue and we no longer have a copy of 'no apologies' on this record.*

In reviewing the respective website, Focus on the Family Australia is a not-for-profit organisation responsible for promoting the video. The message from the CEO commences with *Thank you for being a vital part of what God is doing to Help Families Thrive across Australia*⁹⁶ which demonstrates a Christian/religious base. In reviewing the website further

⁹⁵ <http://www.families.org.au/default.aspx?cat=68>.

⁹⁶ <http://www.families.org.au/default.aspx?cat=12>

there is a section that refers to *No apology facilitator training*. The section states:

This training provides pastors, teachers, parents, youth leaders and others with an excellent resource for use in Australia's churches, schools and youth organisations. This one-day training will provide you with a comprehensive teaching pack, teach you foundational principles regarding sexual health education and help you develop the skills needed to present the material effectively.

Mr Stuart McMillan's and Ms Roslyn McMillan's resumes indicated both had received training in '*No apologies*'.

As the Senior School Assistant Principal was not aware of the video, the video would have been shown to the Middle School students primarily 15 years of age and under.

DET's policy on *Suitability of films and multimedia content for student viewing* was last updated May 2005 and was applicable for the period under consideration. As the video in question does not have a classification rating the policy requires *careful judgement of suitability and where there is doubt, reference should be made to the Principal or Principal's delegate*. The policy also requires the Principal's and parent/guardian approval for students under 15 when watching PG, M, MA15+ rated material. One could reasonably assume the contents of the video would fall within one of these three classifications and therefore require parental consent.

In consideration of the evidence, ie. the chaplains' facilitator training, Christian/religious based video and video not being catalogued in the school system it is highly likely that the viewing of the video was facilitated by the chaplains. The time of when the viewing occurred is not clear however in reviewing Mr Stuart McMillan's diary notes on 23 August 2007; 1.50pm to 3.10pm had been blocked out with *No apologies* next to it.

However whether the video was demonstrated in 2007 or 2008 the policy on *Suitability of films and multimedia content for student viewing* required parental/guardian consent. From the information provided to this office there was no evidence to suggest that consent had been obtained.

DET response to draft investigation response

It is also conceded that after considering information obtained through the Ombudsman investigation on some of the interaction with students by the chaplains as recorded in the chaplains' diaries that was inappropriate in that it had religious element which is outside the scope of the provision of chaplaincy services. The department will take appropriate steps to ensure that chaplains do not take the opportunity to discuss religious content by way of their presence in a school to provide chaplaincy services. It is submitted however that the boundary between religious and other spiritual issues which are permitted for Chaplains to discuss is sometimes difficult to define and arguably a chaplain responding to specific religious questions from a student with religious response may not always be inappropriate.

Issue 3. The reliability and accuracy of the DET investigation report into the provision/delivery of the chaplaincy services programme at Bees Creek Primary School, Berry Springs Primary School, Girraween Primary School, Humpty Doo Primary School and Taminmin High School

Following parental complaints lodged late in 2007 about the chaplaincy services an investigation was initiated by DET and conducted through a Consultant Investigator, Mr Roger Newman. Complaints received by the parents questioned the reliability and accuracy of the final report.

The authorisation request provided to the Consultant Investigator by DET was to investigate on the provision and delivery of the Chaplaincy Services Programme at each of the rural schools⁹⁷. The Terms of Reference provided by DET to Mr Roger Newman included:

1. Management of the programme by the Schools in terms of compliance by the Chaplains involved in the programme with the Department of Education, Science and Training NSCP Guidelines in their provision of the services under the programme.
2. The extent of consultation and community support, including with and from parents, for the programme prior to its implementation at the Schools.
3. Management of the programme by the Schools in terms of compliance by the Chaplains involved in the programme with NSCP Code of Conduct in their provision of the services under the programme.
4. The nature of any services provided to a particular student at Humpty Doo Primary School by a Chaplain, Pastor Stuart McMillan and whether any services were provided in response to the concerns raised in a letter of the student's mother to the Principal of Humpty Doo Primary School of 24 August 2007.
5. The nature and extent of services provided by Pastor Stuart McMillan and Pastor Jason Purugganan to students at Humpty Doo Primary School, and the extent to which those services were authorised.

Mr Roger Newman told my office that Ms Roslyn McMillan had not initially been included in the Terms of Reference as DET was not aware of any involvement by Ms Roslyn McMillan in the parental complaints. However as Mr Roger Newman commenced his enquiries it became evident that Ms Roslyn McMillan also formed part of the complaints. Statements were taken from Mr Stuart McMillan and Mr Jason Purugganan by Mr Newman, however no statement was taken from Ms Roslyn McMillan. Mr Roger Newman did say that during the first interview with Mr Stuart McMillan on 19 March 2008 Ms Roslyn McMillan and Ms Felicity Amery were also present. This was supported by Mr Roger Newman's 2007-8 diary entry.

Mr Roger Newman told my Investigation Officer that details of the complaints were obtained by interviewing the parents with concerns and DET provided him with the freedom

⁹⁷ Bees Creek Primary School, Berry Springs Primary School, Girraween Primary School, Humpty Doo Primary School, Middle Point School (approx enrolment 27 as at 2008) and Taminmin High School.

to 'follow his nose'. Mr Roger Newman explained however that he does not generally provide recommendations at the end of his DET reports unless they have been specifically requested; this was confirmed by Mr Gerry Greene, Acting Director Legal Services. I find this interesting; due to the high level of controversy at the time I would have expected DET to seek recommendations from an independent party.

12.3.1 Association of chaplains and SOSNT

Mr Roger Newman's investigation report stated *Both Pastors Stuart and Ros McMillan emphatically denied that they had any recognised program for paedophiles.* A statement made by Mr Stuart McMillan to Mr Roger Newman only stated that *At no time was MN ever involved in any programs with the church or schools in the area which involved children.*

Mr Roger Newman said in his response to the draft investigation report that the emphatic denial was made on 19 March 2009 during the interview with Mr Stuart McMillan as Ms Roslyn McMillan was in attendance. Mr Roger Newman acknowledged the emphatic denial was not captured in a transcript or statement and agreed it should have been. Mr Newman said he also had a teleconference on 1 April 2008 with Ms Roslyn McMillan, where he asked if there was a program for sex offenders and she responded that Mr MN was 'a one off.'

Mr Stuart McMillan's 2007 diary contained several references to SOSNT (Sex Offender Support NT)⁹⁸ which included the following:

Date in diary	Comments in diary
01/02/2007	SOSNT with an arrow pointing to ANSTI ⁹⁹
02/04/2007	3.00 to 4.00pm - SOSNT Ruth ¹⁰⁰ The Meeting Place
20/08/2007	3.00 pm Ruth TMP ¹⁰¹ + SOSNT
30/08/2007	Between 10.00 and 10.30am – Ruth re SOSNT
31/08/2007	<ul style="list-style-type: none"> • Bus names reg Living Waters Chaplaincy Services ✓ SOSNT
01/09/2007	<p>SOSNT: they have money for community program 12.30pm – Info session – Myths reason SO est of SOSNT Basis of goodlife How to stop reoffence 6.00pm – sos_nt@bigpond.com - New Account ✓</p>

(Table continued on next page)

⁹⁸ Broadcast on 28/09/2007 – *Can paedophiles be rehabilitated? RN – Sex Offender Support NT (SOSNT).* (RN was the wife of Mr MN the convicted paedophile.)

⁹⁹ A media release on 30 June 2006 by Delia Lawrie Minister for Family and Community Services, Northern Territory Government described ANSTI as *A community organisation that provides supported accommodation and rehabilitation services for drug and alcohol clients has been given 90 days notice of de-funding after ongoing concerns over the governance of the service. A New Start Towards Independence (ANSTI) is a 20-bed facility at Bees Creek near Darwin that receives about \$420,000 per year from the Northern Territory Government.....'* ANSTI management has continually refused to discuss concerns about governance, service reviews and other work needed to renegotiate its funding agreement, which expires tomorrow....'

¹⁰⁰ The wife of the convicted paedophile.

¹⁰¹ TMP is believed to be an abbreviation for The Meeting Place

Date in diary	Comments in diary
04/09/2007	Top of page - SOSNT
17/09/2007	3.00pm - TMP - 3.30pm Ruth SOSNT
11/10/2007	Name of Complainant B 12/10/2007 <i>Matter to do with school – I believe in rehabilitation</i> <i>SOS_NT Conflict of interest</i> <i>Services must be stopped until matters resolved.</i> <i>Know people who have lived at the Meeting Place with children – stop chaplaincy services – not comfortable</i>
23/10/2007	<i>Michael Re - put in SOS File *</i>
14/11/2007	<i>Call from Ruth – should have involved me personal this affects us wants to talk with Principals</i> <i>Jason – please don't talk to Ruth¹⁰² anymore about what's happening in schools is our business x it not helpful for her to be involved.</i>

Ms RN, wife of Mr MN, convicted paedophile, approached my office on 24 July 2008 in relation to some concerns she had about matters that will not be disclosed within this report. An extract from the statement provided by Ms RN was as follows: *We worked with the Church in Humpty Doo to set up a Support Program for men coming out of prison, and attempted to set up a Community based S.O¹⁰³ program.*

Although Mr Roger Newman's investigation report states it was emphatically denied by the chaplains, it is considered Mr Stuart McMillan was in some way involved with the Sex Offender Support NT. I obtained Mr Stuart McMillan's diary under compulsion. Due to time constraints Mr Newman did not ask the chaplains for their diaries nor did he examine them when deciding to accept Mr and Mrs McMillan's denials.

12.3.2 Concerns raised by Clinical Psychologist of child X

The Clinical Psychologist who provided care and treatment to child X raised concerns about Mr Roger Newman's investigative report and made the following allegations in an email to my office dated 28 August 2008.

1. *The first misrepresentation was that I was reported to have said child X had suffered no negative effects of his engagement with Mr Stuart McMillan through the Chaplaincy programme. What I said in that interview was that I was unable to determine at that time whether there had been any harm to child X through his engagement in the Chaplaincy programme. There was no statement either directly or by implication that in my opinion there was no negative affect on child X.*
2. *The second misrepresentation was that the most significant statement made by me to the investigator was completely omitted from the report. I made the statement that Mr McMillan was engaging in both counselling and psychological, which significantly exceeded the boundaries of pastoral care. I cited specific examples of how Mr McMillan was engaged in these practices. Furthermore, I explained in*

¹⁰² Ruth is believed to be RN wife of convicted paedophile Mr MN

¹⁰³ S.O. – Sex Offender

detail the differences between pastoral care and counselling or psychological intervention. In addition, with the information provided to me by the investigator on Mr McMillan's qualifications, I stated my strong concerns over his conduct and intervention practices, especially given this was not allowed under the Chaplaincy programme guidelines. However, despite my statements, which were omitted from the final report, it was determined by DEET that Mr McMillan did not engage in counselling or psychological intervention.

In considering the first and second allegations Mr Roger Newman's final investigative report stated:

Earlier intervention in treating child X's condition would have allowed the symptoms displayed by child X to be minimised by putting in place strategies to address the symptoms, allowing for better results for all concerned.

Clinical Psychologist stated he is not aware of the nature of the contact between Pastor Stuart McMillan and child X but believes it involved Pastoral Care (caring and listening role).

According to the Clinical Psychologist there is no indication that the Pastoral Care supplied by Pastor McMillan to child X was detrimental to child X's condition.

The interview transcript¹⁰⁴ between the Clinical Psychologist and Mr Roger Newman dated 8 April 2008 recorded:

ROGER ... I think you mentioned that what Stuart had done was basically right.

CHILD PSYCH *Well I don't know what he did was right what I'm saying is the school told me that he seemed more content and there seemed to be a de-escalation of behaviour problems during the same he was seeing Stuart. I have no idea what Stuart was actually doing at the time. They just described it to me as most of the time they'd sit out in the open, they'd have a discussion, it was a pastoral care type affair but I don't know the ins and outs of what he was doing. I can't say whether it was right or not.*

ROGER Could you explain pastoral care for me...

CHILD PSYCH *The way I would interpret pastoral care is caring and listening, that's it. Once you get into the realms of giving people advice then you're entering into the realms of, well even we are very careful about giving advice, and we're professionals, but I see pastoral care as largely listening and then making people feel more safe and more comfortable. Just like giving them a voice and what we call positive regard, so, yeah, I understand how you're feeling, you know, what you might find in a basic counselling text book without the next stage of going into the therapeutic side of intervention. That's what I would consider pastoral care. I don't know if that's the appropriate definition.*

ROGER Look the only thing I've got as part of the treatment that he provided was that he showed him books and told him to describe his feeling in relation to

¹⁰⁴ Transcribed by my office from the audio recording.

excitement, anger, that kind of thing and how he felt by reading that or looking at that, so. That's what I picked up on and that's only come from Complainant C.

CHILD PSYCH *Yeah and look if that is the case, I'm not saying there was a problem because, potentially a problem there, because as a psychologist if I'm looking at some of those things and there are two serious possibilities that can happen. Firstly there can be a negative emotional reaction in some people. So how do you deal with a negative emotional reaction if you're not trained to deal with it ... The other problem that I see is, say if I did show a child a book of emotions, I'm showing them a book of emotions to see what their reactions are and to find out how they interpret things. Now as a trained Clinical Psychologist with a PhD I can make really rational assumptions... So I think its treading in dangerous ground because once you start that active interaction as opposed to listening I think you tend to tread in dangerous ground there because you're starting to engage in a therapeutic process or even a clinical process.*

CHILD PSYCH *... I can't do occupational therapy, for instance, I have no qualifications in that area. I think they are great ... but I don't want them going over the line into psychological assessment and it's the same if someone engaged to do pastoral care shouldn't be going over the line into making assessments. You see I'd like to know what was the intention of opening some emotions, what was going to be done with it, those sorts of things. It's really an important question.*

ROGER *...I suppose one other question I need to ask is, is there anything that you assessed with child X that may have, or that has been said or done by Stuart McMillan caused any problems with child X. Is there anything that you know, is there anything that's obvious that he's done that has caused problems?*

CHILD PSYCH *No there's nothing obvious to me. He certainly didn't disclose anything to me.*

ROGER *So its mainly just the assessment by the school or the failure to, because they followed the set procedures and they haven't followed, they've followed the procedures but the procedures don't allow for people in child X's case?*

CHILD PSYCH *I'm not criticising the school per se, it's the process in the Education Department.*

CHILD PSYCH *So there's that. But I do, I always have a concern when people who aren't qualified, and its not because I'm being a professional snob I've always got a concern when people who aren't qualified are engaging in processes of counselling and, from what you've described, it sounds a bit like this has crossed into that area. You know social workers and psychologists are the ones who are trained in that, occupational therapists get a little bit of training in it, but really when you're dealing with children you need to have specialist training in that area. So that concerns me, and I would really, I'd like to know if I were investigating it, I would like to know why he was showing pictures of emotions to a child because I'd like to know what he was going to do with it and how he was going to use it because to me that is crossing the line into*

something which is outside the area of pastoral care. That's going into psychology or therapy or assessment.

... I'm just saying that would very seriously concern me. Not because its bad per se but a little knowledge is a dangerous thing.

In considering the transcripts Mr Roger Newman was not entirely representative of the Clinical Psychologist's view. Initially when the Clinical Psychologist stated that he thought child X was undergoing pastoral care with Mr Stuart McMillan, he was relying on advice from Humpty Doo Primary School. As the Clinical Psychologist became aware of the activities conducted during the sessions it was clear he did not believe it was just pastoral care; he believed it to be going into psychology, therapy or assessment.

12.3.3 Reference to the wrong child in the investigation report

Complainant A said that Mr Roger Newman had interviewed the wrong child with respect to the demountable incident involving Mr Stuart McMillan. In reviewing the evidence it was obvious the correct child was identified by Mr Roger Newman within the report and his father was correctly interviewed.

12.3.4 Interview with Complainant A's daughter

Complainant A raised concerns that her daughter, who was around twelve years old at the time, had a tape recorded interview without parent consent. Complainant A said she provided Mr Roger Newman with consent to interview her daughter but said she had no prior knowledge of the tape recording. Mr Roger Newman confirmed that he had tape recorded the interview as this is his preferred method:

because there's no chance then of me leading the child or saying things that she hasn't said or whatever. And I would have told Complainant A that before I started.

Mr Roger Newman said he may have explained the recording to the child prior to commencing the tape therefore there was no recorded verification of this. As the child proceeded into the interview and by their feedback, Mr Newman took this to mean that his explanation was accepted and understood. Mr Newman said:

I mean, the assessment comes when you're talking to them, whether, you know, you're getting good feedback or whether they're shy or whether they don't have any clue and my appreciation of her at the time was that her feedback was very good and she explained herself well. And she had no trouble understanding my questions. Complainant A's child confirmed to my office that Mr Roger Newman did explain to her that he was going to record the interview. oh he recorded Mum first and then I came inside and then he just said that, you know, he'd be recording it and asking you a few questions and then if it was OK to proceed with it. I said, yeah, and then he started recording.

In considering the *Surveillance Devices Act 2007* there are no apparent breaches.

Complainant A also said that not all the interview was tape recorded. Mr Roger Newman explained *... that probably would have been when I was explaining to her about the interview and what I did ...* Mr Roger Newman was quite clear he would not have commenced the actual interview prior to starting the recorder. Complainant A's daughter said that prior to the recording of her interview Mr Roger Newman told her he would be recording the

interview, asked a few questions and obtained permission to proceed. Based on this information there is no evidence to suggest that Mr Roger Newman committed any breaches.

I do consider that Mr Roger Newman could have improved his technique by repeating the question about permission and the process during the recording.

12.3.5 Contact with Ms Belinda Kinsella

Mr Roger Newman records in his investigative report that Ms Belinda Kinsella was identified by parents as being able to *offer evidence in relation to the Pastors not following the NSCP guidelines*. In his report Mr Roger Newman stated he was unable to speak with Ms Belinda Kinsella due to her teaching arrangements and had left a message for her to call back but she had not made contact with him. My office contacted Ms Belinda Kinsella by phone and confirmed she was a teacher at Humpty Doo Primary School. Ms Belinda Kinsella said that she was surprised parents had identified her and did not recall expressing any concerns and fully supported the chaplaincy programme.

12.3.6 Child Z, son of witness A

Mr Roger Newman's investigative report identified through his interview with witness A that Mr JT, Principal Bees Creek Primary School had referred child Z to Mr Jason Purugganan for '*behaviour management*'. Witness A told my Investigation Officer that her son had been bullied at school and was referred for assistance. Mr Roger Newman stated in his report that witness A later became aware that it was Mr Jason Purugganan who had been speaking with her son. The report then acknowledged that witness A *withdrew her permission*. Witness A had not provided permission in the first place as is recognised earlier in Mr Roger Newman's report *My permission was neither sought nor given*.

Mr Roger Newman's report did not show that any enquiries were made into the matter. However information provided by Mr Roger Newman following receipt of the draft investigation report stated that several emails¹⁰⁵ had been forwarded to Witness A. The emails revealed pertinent questions, which led to a conversation with Witness A on 9 April 2008. Mr Newman noted:

Witness A said that her son child Z was spoken to by Jason P. Witness A stated that she did not opt in or opt out of the program and understood that the Chaplin(sic) would only be used in an emergency. Her son was spoken to (sic) Mr Jason P in relation to 'behaviour management'. Whilst she was not particularly keen on Jason P seeing her son it did help him. Witness A stated that she felt that it was more likely JT the Principal who resolved the matter and she was not sure if Jason P had anything to do with it. The catalyst for the whole matter was the paedophile on the property at Humpty Doo not so much Jason P. Witness A stated that she never liked the NSCP as religion should not be involved. Witness A said that she never addressed the matter with anyone at Bees Creek School or at DEET...

The witness said she was not aware of the type of sessions ie. one-on-one or group that had been undertaken with her son as she had not been provided with any information. Witness A's view was that such services should be provided by qualified counsellors and not chaplains. Mr Jason Purugganan's diaries showed no reference to any one-on-one sessions

¹⁰⁵ 7 and 9 April 2009 – copies were provided to my office on 13 August 2010.

with child Z, however child Z was listed under *BCPS Children who don't access chaplaincy services*. Mr Jason Purugganan stated:

I don't recall giving any service to child Z because I know he doesn't have chaplaincy permission from the parent.

No contrary findings were made against Mr Roger Newman on this issue.

Issue 4. Services provided by the chaplains to children within Bees Creek Primary School, Berry Springs Primary School, Girraween Primary School, Humpty Doo Primary School and Taminmin High School

Several concerns were raised by parents in relation to the actual services provided by the pastors prior to the commencement of the NSCP and by the chaplains during the NSCP. In considering this issue the nature of the services was reviewed, in addition to the chaplains' qualifications.

12.4.1 Qualifications of chaplains

The following table lists the respective chaplains' qualifications. A comparison of those qualifications with respect to the services delivered or to be delivered has been discussed in sections 12.4.2.2 *One-on-one sessions* and 12.4.2.3 *Group sessions*.

Chaplain	Qualifications	Year	Length of course	Award (NCP-No Certificate Provided to my office)
Mr Jason Purugganan	Bachelor of Secondary Education at Philippine Normal University	1997		Bachelor
	Tribes Training. Details of provider not provided.	2005	24hrs	NCP
	Restorative Justice provided at Humpty Doo Primary School. Details of provider not provided.	2007	No info	NCP
	Basic Unit of Clinical Pastoral Education by SA/NT Assoc for Clinical Pastoral Education Inc.	06/06/2008	400hrs	Certificate of satisfactory completion
	Mind Matters Level One Introductory Workshop	25/02/2009	2 days	Certificate of Participation
	Resuscitation by Royal Life Saving	20/07/2009	2.5hrs	Certificate valid for 12 months
Ms Roslyn McMillan (Please note there are additional qualifications associated with religion, marriage counselling, Aboriginal Law and during employment with DET there were professional development short courses)	Bachelor of Behavioural Sciences at Macquarie University	Studied over 1973-75	3 yrs	Bachelor
	Graduate Diploma in Education (Primary) at Darwin Institute of Technology	03/05/1986	1 yr	Graduate Diploma
	Suicide Intervention Workshop by Living Works	19/03/1999	14 hrs	Certificate for Participation
	RAP (Adolescents and Parents) Facilitator Training by Griffith University	25/10/2001	2 days	Certificate of completion
	Conflict Resolution by EAS	07/10/2002	1 day	Certificate of Attendance
	Careforce Lifekeys Facilitator	2002		
	Professional Assault Response Training by Professional Group Facilitators Pty Ltd	13-14/02/2003	2 days	Certificate of completion
	Seasons for Growth by Seasons for Growth International	21/10/2004 Valid until 21/10/2006	2 days	Certificate of Accreditation
	Families and Schools Together by Batchelor Area School	Term 2 2004	8 weeks of 2.5hrs	Certificate of Accreditation
	Basic Unit of Clinical Pastoral Education by SA/NT Assoc for Clinical Pastoral Education Inc.	22/09/2004	400hrs	Certificate of satisfactory completion
	No Apologies by Focus on Family	2006	1 day	NCP
	Treating Complex Trauma by Australian Childhood Foundation	19-20/04/2007	2 days	Certificate of Attendance

<i>Chaplain</i>	<i>Qualifications</i>	<i>Year</i>	<i>Length of course</i>	<i>Award (NCP-No Certificate Provided to my office)</i>
Mr Stuart McMillan (Please note there are additional qualifications in religion, marriage counselling, Taxation Law)	Suicide Intervention by Living Works Education Inc.	1999	14hrs	Certificate for Participation
	Real Justice Conferencing Facilitator Training by Real Justice	2000	2 days	Certificate of Attendance
	Workplace Trainer Category 1 by Arnhemland Progress Assoc. Inc	2001	Duration unknown as qual out of date	Statement of Attainment - Accredited
	Careforce Facilitator Training by Careforce Lifekeys	2002	14-16hrs	Church based training – NCP
	Response Ability Pathways by Reclaiming Children & Youth	2005	2-3 days	NCP
	Peer Skills Facilitator Training by Kids Help Line	2005	2 days	Certificate of Attendance & Completion
	Mental Health First Aid Instructor Training by Mental Health First Aid	2005	~ 5days	Certificate of Accreditation
	No Apologies – Facilitator Training by Focus on Family	2006	1 day	NCP
	Treating Complex Trauma by Australian Childhood Foundation	2007	2 days	Certificate of Attendance
	Respond Rather than React – working with young people with complex & challenging behaviours by Connected Self	2009	2 days	Certificate of Attendance

The chaplains were also provided with the following recognition by the Uniting Church Northern Synod.

12.4.1.1 Mr Stuart McMillan

Was a lay person, not ordained but was recognised by the Uniting Church Northern Synod as a Pastor as at 1 May 2005 in which recognition included chaplaincy work in the Darwin’s rural area schools¹⁰⁶.

12.4.1.2 Ms Roslyn McMillan

Was also a lay person, not ordained but was recognised by the Uniting Church Northern Synod as a Pastor as at 1 May 2005 in which recognition included chaplaincy work in the Darwin’s rural area schools¹⁰⁷.

12.4.1.3 Mr Jason Purugganan

Mr Jason Purugganan was also a lay person, not ordained however recognised by the Uniting Church Northern Synod as a Chaplain on 16 October 2007¹⁰⁸.

¹⁰⁶ Letter signed by Peter Jones, General Secretary, Northern Synod dated 14 August 2009.

¹⁰⁷ Letter signed by Peter Jones, General Secretary, Northern Synod dated 14 August 2009.

¹⁰⁸ Letter signed by Peter Jones, General Secretary, Northern Synod dated 14 August 2009.

12.4.2 Services Provided By Chaplains

The table below summaries the commencement of the respective chaplains/pastors within the schools investigated.

Chaplain/ Pastor	Date of commencement	School	Effective date of NSCP funding agreement	Recognised by the Uniting Church ¹⁰⁹
Jason Purugganan	16/10/2007	Bees Creek Primary School Girraween Primary School Taminmin High School	05/10/2007 28/09/2007 26/05/2008	As a <i>chaplain</i> on 16/10/2007
Roslyn McMillan	2004	Berry Springs Primary School Girraween Primary School Taminmin High School	28/09/2007 28/09/2007 26/05/2008	As a <i>Pastor</i> on 01/05/2005
Stuart McMillan	2004	Humpty Doo Primary School Taminmin High School	22/01/2008 26/05/2008	As a <i>Pastor</i> on 01/05/2005

12.4.2.1 Taminmin High School

Mr AC¹¹⁰ told my Investigation Officer that services provided by Mr Stuart McMillan commenced as early as 2004, which was prior to Mr AC's commencement with Taminmin High School. Ms Roslyn McMillan joined Mr Stuart McMillan later in 2004, both operating on a limited basis. Mr AC said that the two chaplains operated as part of the wellbeing team and were involved in the mind matters school program. Mr AC also said that the chaplains were involved in critical incident matters in addition to running games for groups.

Since the commencement of the NSCP three chaplains have been providing services to Taminmin High School; Mr Stuart McMillan and Ms Roslyn McMillan were joined by Mr Jason Purugganan. It should also be noted that in early 2010 Mr Stuart McMillan withdrew his chaplaincy services to the schools due to other commitments with the church and has since been replaced by another chaplain. Mr AC said that the NSCP chaplaincy services have extended to one-on-one services in addition to group sessions such as Seasons for Growth. Chaplains have worked in class room situations in relation to goal setting and decision making and *with big day out sessions*.

Taminmin High School is a large school and therefore possesses two Assistant Principals, one for middle school, Ms MM, and one for senior school, Ms RM.

Ms RM stated that the middle school mostly used the chaplaincy program, which therefore restricted use by the senior school. The only chaplaincy service used by the senior school at

¹⁰⁹ Letter dated 14 August 2009 from Mr Peter Jones, General Secretary, Northern Synod, The Uniting Church in Australia.

¹¹⁰ Principal, Taminmin High School

the time of the interview was Seasons for Growth, which was attended by two students who later withdrew. Ms RM said:

I don't refer for one-on-one sessions, mine are group programmed... I use them for the programs with the outcomes so they're targeted, so I don't use them for one-on-one... I use my counsellor for the one-on-one sessions.

Prior to the commencement of the NSCP Ms RM only referred families to the chaplains and not individual students. The families would then contact the chaplains to obtain their services therefore minimising the school's role.

Ms MM said the services provided prior to the NSCP were:

Fairly similar to what they're doing now except without the paperwork I guess, in that it's, you know, recommendations and just part of their duties as the wellbeing team.

The chaplaincy duties referred to by Ms MM included:

Support for students in need. It might be in class support, it might be going into a classroom or it might be support for a teacher in a classroom, it could be some work with the families if the families are, you know, keen, if the families want to be involved.

When asked about one-on-one sessions and whether they were conducted prior to the commencement of the NSCP Ms MM said:

Look I've never been into the sessions, I'm not sure, so I can't say I'm sure with that... They may have but I'm not sure so I can't say that I'm sure of that.

Ms MM said she did not monitor the one-on-one sessions. Mr Stuart McMillan's 2007 note book recorded one-on-one sessions were being conducted in the middle school as early as 2007. With the commencement of the NSCP Ms MM, Assistant Principal Middle School advised that only students with parental consent would be permitted to attend one-on-one sessions. However when asked whether she had any involvement with that Ms MM said 'no'. The method utilised for monitoring the cases was explained by Ms MM as:

every week we have the wellbeing team meeting and it depends on, sometimes its very confidential, so you don't, so if it's a general thing you monitor by just looking at the progress of the student and it might be with a counsellor or the home liaison or the indigenous officer. Generally with the chaplaincy, if they've got an individual they will, they will do an email back to me and report on the progress, or if they've been into a classroom observing a student.

If an issue arose in a one-on-one session Ms MM said that the chaplains would report to her on *how the sessions had gone*. When asked what would happen if further input was required from other services, Ms MM said she would discuss this with the chaplain/s and suggestions may be made generally without involvement of the wellbeing team. Ms MM also acknowledged Seasons for Growth as a program provided by the chaplains to the middle school.

12.4.2.2 Humpty Doo Primary School

Prior to the NSCP Mr Stuart McMillan provided services to Humpty Doo Primary School since 2004. Services included assisting with critical incidents due to various deaths and pastoral care which included one-on-one sessions. Ms FH said:

*One example I can give was that he (Mr Stuart McMillan) used to come to the school at morning tea and speak with the teachers... And through his conversations with the teachers he actually identified that there was about eight children, nine children in the school that had some sort of separation or grieving happening in their lives, like dogs, or grandparents, or family separations, you know, to broaden that term. And went to the Assistant Principal and said, you know, through these conversations this is what I'm hearing at the morning tea table, I can provide, **I'm trained to provide a seasons of growth program** that talks about separation and grieving. And so the Assistant Principal sent letters home that illustrated to all the parents what the program was all about and with our wellbeing officer, who's a teacher, he actually then implemented the program...*

With respect to the critical incidents Ms FH said:

We had a student, two student deaths which weren't at the school but they impacted highly on the school. We had a staff suicide, we had parent deaths, we had all sorts of things like that, so he (Mr Stuart McMillan) was there for the staff a lot ... the Taminmin wellbeing team came in, which included Pastor Stuart but also included the nurse and counsellor...

The NSCP commenced within the Humpty Doo Primary School on 22 January 2008 following the signing of the funding agreement.

A Humpty Doo Primary School Newsletter dated 6 February 2008 was then sent to parents and identified five areas Mr Stuart McMillan would be providing services in:

1. *Pastoral care – listening to, and advocating for, the needs of students, families and staff. May involve referrals to health support services eg counsellors.*
2. *Personal development – courses, classes or workshops/information sessions for students, staff or families eg Peer skills; Resourceful Adolescent Program (student and parent courses); Room 14 (social skills); Seasons for Growth (grief and loss).*
3. *Critical incidents – support in times of bereavement, serious injury etc.*
4. *Spiritual advice – to reflect with students and staff, when requested, on any questions they have relating to the meaning of life; to direct students and staff to relevant community groups, as appropriate.*
5. *General – team relationships and approaches, school management support etc eg. Real Justice conferences; Values curriculum.*

12.4.2.3 Girraween Primary School

In 2004 prior to the NSCP Ms Roslyn McMillan provided a Kids Club service to the school, which included religious material. The Kids Club has not been discussed any further within this section of the report as the only issue arising from this was consent, which has been examined under Issue 2. Ms MB told my Investigation Officer that prior to the NSCP Ms Roslyn McMillan also provided critical incidents to groups of selected children already known to Ms McMillan. Ms Roslyn McMillan and Mr Jason Purugganan both commenced providing chaplaincy services at Girraween Primary School under the NSCP on 28 September 2007. The services extended to providing one-on-one sessions and clubs in chess and table tennis. As was identified in Issue 2 one student was recorded through the chaplains' materials as having one-on-one sessions in 2007, however there was no recorded permission verbal or written. This may suggest Ms MB was unaware of the session provided in 2007.

12.4.2.4 Berry Springs Primary School

Berry Springs Primary School commenced receiving services from Ms Roslyn McMillan through the Kids Club in 2004. Similar to Girraween Primary School this included elements of religion, however following the commencement of the NSCP the religious component ended at the request of Ms SD, Principal. During the NSCP, which became effective on 28 September 2007, Ms Roslyn McMillan continued to be the sole provider of chaplaincy services to the school. Ms SD also suggested there was a one off service provided by Mr Stuart McMillan, as he was trained in Real Justice; fathers and sons were brought together to discuss bullying issues. Changes implemented during the NSCP included removal of the chaplain from assisting in classroom situations in response to parents concerns. Prior to this Ms Roslyn McMillan assisted teachers in values education programs, talking to children in classes and assisting in early childhood classes. Although pastoral care has been provided within the school, Ms SD said the behavioural issues would be referred to the Special Education teacher or Assistant Principal.

Student records held by Ms Roslyn McMillan identified that on or around October – November 2007 following the commencement of the NSCP several one-on-one sessions had been conducted with a number of students. These services continued into 2008 and 2009.

12.4.2.5 Bees Creek Primary School

Prior to the commencement of the NSCP effective 05 October 2007 Mr JT, Principal, told my Investigation Officer there were no chaplaincy services provided to the school. On 16 October 2007 Mr Jason Purugganan commenced providing chaplaincy services to Bees Creek Primary School. Services extended to pastoral care including one-on-one sessions. At the time of his interview Mr Jason Purugganan said:

I've had a chance to provide group activities in Bees Creek but this is still within the confines of the classroom. So the teacher is there doing the supervision and me providing a support.

In considering the types of services provided by the chaplains/pastors at each of the schools the following sections have outlined more detailed information on the services and issues arising.

12.4.2.6 An outline of the Room 14 program

Room 14 and Room 28 are social language programs designed by a Speech-Language Pathologist named Carolyn Wilson. Room 28 has not been considered in extensive detail as it did not come into issue. In enquiring about the Room 14 program the Director of Pro-ed Australia provided his opinion as a result of having dealt with publishers for over twenty years:

The suggested age range for use of the Room 14 program is a developmental age of 6 to 10 years. Whilst the introduction states ‘...the flexibility of Room 14 makes it especially applicable to collaboration among various professionals whose goal it is to help their students build social skills.’ The instruction manual is written in a format for teachers to use as lessons. The introduction goes on to say ‘...Room 14 lessons offer a variety of teaching procedures. The lessons involve your students in important language activities ...’ and goes on to state ‘First, determine your student’s social language needs with the Social Language Checklist... ..Then, choose lessons that will meet your student’s needs.’ and further adds ‘..Combine the Room 14 lessons with your professional expertise..’

The publisher’s website states ‘Our mission has been to provide ... material for speech-language pathologists.’ and ‘Speech-language pathologists, LD (learning disability) teachers, special educators, reading specialists, and general education teachers are our usual customers.’

*Whilst the program does not stipulate towards qualifications for those administering the program, I believe that it is directed towards teachers, speech pathologists and educational psychologists, who have had training in dealing with and assessing children in an educational setting. **I could not recommend it otherwise.***

The Director of Pro-ed further told my investigator that without formal qualifications as a teacher or health professional he did not believe Pastors providing pastoral care would possess the required skills to deliver this program to young children with social language/communication problems.

When Mr Stuart McMillan was asked about the Room 14 program, he said:

*I purchased it from a **professional education supply house** in ... Queensland or New South Wales.*

When further asked how did he establish there were no specific qualification requirements Mr Stuart McMillan responded:

Because you’re freely able to use it as against other programs that are provided. For example, I was trained as a mental health first aid facilitator. You can’t provide that program unless you are trained and certified to provide it, there are no requirements on that program to have done prior training to deliver the material. ...So lots of education material have that requirement, primarily if you’re delivering rock and water you have to have done the rock and water training for example. So that’s what I’m saying, there’s no requirement by the program, by the producers of those materials to have done any specific training.

Mr Stuart McMillan was unable to provide a reasonable response, and although he acknowledged purchasing the program from a professional education supply house he failed to acknowledge they predominantly supply teachers and other qualified professionals.

Ms Roslyn McMillan said in her chaplaincy role she used parts of Room 14 such as *Making and Keeping Friends*:

I think being ... a trained teacher, one of the things that you have to do is select resources that are helpful and so that's what I did in my teaching career and that's why I came across that resource actually, no not that particular one, but that publisher, when I was teaching at Batchelor Area School. I used one of the similar products by this publishing house when I was teaching at Batchelor and I believed it was a really good pastoral care tool with those students. And so when looking at their catalogue I saw room 14 on their catalogue and so we purchased that and thought, mm, this does look really helpful and so that's why we've been using it, or bits of it.

Ms Roslyn McMillan told my office she did not know if specific qualifications were required to provide the program and confirmed she made no enquiries to that effect. Either DET or DEEWR should be questioning whether it is appropriate for Ms Roslyn McMillan to deliver the Room 14 program given she is not engaged in a teaching capacity, but to provide a chaplaincy service.

Mr Jason Purugganan told my Investigation Officer he had not delivered either the Room 14 or 28 programs.

Ms MM, Assistant Principal confirmed that neither Room 14 nor 28 were being provided to the middle school at Taminmin High School. As discussed earlier the only program delivered by the chaplains within the senior school at the time of interview was Seasons for Growth.

Parts of the Room 14 program were being delivered by Ms Roslyn McMillan at Girraween Primary School, however, Ms MB was not fully certain. With respect to Berry Springs Primary school the unit provided to the students was *Making and Keeping Friends* in which specific written parental/guardian consent was obtained.

In considering Humpty Doo Primary School, Ms FH said that the Room 14 program was being delivered by Mr Stuart McMillan, which was also confirmed in the February 2008 newsletter sent to parents. Ms FH said that Mr Stuart McMillan *spoke with the teacher about what needed to be done and I've looked at the Room 14 materials and it was the materials that, yeah, that you would use with that kind of thing. I mean you use it broadly in classrooms ...* Ms FH also agreed that the program is generally delivered by teachers and when asked further about the qualifications for the Room 14 program she stated *He (Mr Stuart McMillan) was trained in it I believe, or had used the materials, yeah.* Ms FH relied on what Mr Stuart McMillan had told her. Child X who was a recipient to the Room 14 program has been considered further in the next section as it was provided during a one-on-one session.

12.4.2.7 One-on-one sessions

One-on-one sessions were being conducted as part of the pastoral care provided by chaplains to the students. Parents said the chaplains had been providing counselling services to students within these sessions. Principals were aware of the chaplains conducting the one-on-one sessions, with the exception of the senior school at Taminmin High School, as their Assistant Principal referred her students to the school counsellor for such sessions.

Mr Alan Green operated in the role of Executive Director Schools North from October 2008 to August 2009, and explained about the chaplaincy service:

My understanding of it is that its actually a program where we will put in a school a person who ... their job is to provide a point of counselling and support to students and families. Where I've seen it work really well in other schools, particularly in secondary schools where that person has a fabulous affinity for youth and will connect them into a whole range of different pathways and activities, and its almost like a student mentor role, and they will sometimes fill roles working with teachers around particularly sensitive issues, and with approvals from parents provide a one-on-one counselling service....

However when asked about the provision of one-on-one services to students Mr Alan Green said he would not allow it. When asked whether this position had been communicated with the Principals Mr Alan Green recalled addressing this with Ms FH, Principal Humpty Doo Primary School. In addition Mr Alan Green said:

... as a general rule, I would and do advise Principals that no teacher or adult is with a kid by themselves outside line of sight of other people. And it even goes down to teachers keeping kids, one kid in after school, I mean, you've got to be a bit, you can't be totally risk averse but, you know, in classrooms you've got open windows and that's, as long as there's a line of sight you're pretty OK. But people who are not trained and particularly where they have questions hanging over their head by association rightly or wrongly you've just got to manage the risk differently.

Mr Kevin Gillan was General Manager PARCS in 2007, the Executive Director in 2007/2008 and Acting Chief Executive from October 2008 through to May of 2009 and has been Head of School Education and Training from May 2009 through to the time of his interview. Mr Kevin Gillan said:

Our view is that the chaplains should be working to the job description as is outlined by the Commonwealth policy and procedures that the school has signed up to ... We made it very clear that our chaplains were not counsellors and even if they were qualified counsellors they weren't employed as such, they were employed as chaplains and they had a very discreet list of functions and one of them wasn't counselling students.

There is no job description outlined by the Commonwealth policy and procedures and the schools did not sign up to anything as it was not a party to the agreement between the Commonwealth and funding recipient.

Mr Kevin Gillan described his understanding of counselling as *providing advice of a personal nature, the one-on-one situation with students*. With respect to children who experience emotional behavioural issues, Mr Kevin Gillan said:

We have professional counsellors and psychologists that perform that requirement and my expectation would be that the Principal would ensure that students with emotional and behavioural difficulties would be recommended to be seen by one of our professional people that have expertise in that area, not a school chaplain.

In view of the Executive position within DET on one-on-one sessions child X and other students serviced by the chaplains/pastors on a one-on-one basis have been considered below.

Child X

One of the initial complaints involved the services provided to a young student of Humpty Doo Primary School. Although there was some dispute as to what preceded, the school identified the child was experiencing difficulties with other students. The mother of the child, child's teacher and the interviewed chaplain (pastor at the time), Mr Stuart McMillan acknowledged that following alleged bullying child X threatened to bring a knife to school to stab another child until he was dead. A think tank note to child X's parents also supported the schools knowledge of the child's actions.

Ms FH, Principal denied that child X had threatened to bring a knife to school to stab another student and suggested her enquiries revealed it was related to 'pigging'. Child X's teacher stated it did happen and confirmed the Think Tank form was correct – *Threatened to destroy other student's property, threw resources, swore, threatened other students, refused to follow teacher instructions*. The referring teacher as noted on the form was Ms JW. When Ms JW re-attended my office to review the transcript of her interview she provided additional information which played down the threat.¹¹¹ Contrary to this the father of child X said that on the day of the incident Ms JW ran out to tell him about the incident at school. Ms JW did not recall what was discussed only that it ended with the father of child X getting angry and abusive towards her.

As a result of the incident a meeting was held with the child's parents, the Principal¹¹², Assistant Principal and two of the teachers. The parents requested counselling or a similar professional service for their child, which was supported by a letter brought into and distributed at that meeting. In response the Principal requested Mr Stuart McMillan to join the meeting. The evidence does not conclusively support how Mr McMillan was introduced to the parents nor what services he was to provide. However what is known and agreed was at the time Mr Stuart McMillan was a Pastor working as a volunteer in Humpty Doo Primary School. Mr Stuart McMillan told my Investigation Officer that the decision of *that meeting was that I would do some work with child X*. Mr Stuart McMillan said:

I advised that I was involved in pastoral care, we talked about things like resilience, understanding feelings, social connections and some anger management were a range of things that we talked about in that meeting. I have never advised a parent that I'm a counsellor.

¹¹¹ In response to the draft investigation report Complainant C advised that on reading the draft this was the first she had heard of 'pigging' to explain the knife threat incident.

¹¹² Ms FH

The mother said that when she was assured during the meeting that the service would not be religious she assumed the chaplain was also a counsellor, particularly as her minutes of the meeting recorded the Assistant Principal as saying *Stuart is a professional and can differentiate between his two roles*. Given the grave concerns the mother had for her child and written expression provided to the school it would be reasonable to conclude that the mother, complainant C, believed she was receiving services from a counsellor or similar professional.

In relation to the services provided to the child Mr Stuart McMillan said:

The nature of what I was asking him to do was to do some stuff at home as well so one of the ways we were working on him, thinking about getting in touch with his own feelings, and he wasn't a great writer but I discovered he liked drawing so I asked him to keep a drawing journal essentially of what was happening for him each day. So I was aware that, you know, Mum and Dad were part of the process because he was doing it at home, he was doing that each day at home. And he would talk to me about that process. I didn't actually have another conversation with his parents until that conversation in October. So I mean, you'll see the process. I talked to him five times over the course of a month, basically, a little bit more than a month. Yeah, five times in a month, pretty much the month of September except for that first meeting right at the end of August.

Talked with him each week and then I had that conversation with complainant C and you'll see from the notes that that was quite a lengthy conversation. Yeah, in which she didn't raise any issues of concern with me at that time about her son, or about our engagement, things that he'd been doing, any of those sorts of things you'll see my reflections on those notes..... I sought to help child X to understand himself and what emotions were being stirred up in him. I am aware of the incident that led to that conversation. I was aware of that before I started to talk with him because I had talked to the classroom teacher. And there had been a number of anger type incidents. So the process was about.... how does child X feel about himself, what are the sorts of feelings that are going on that escalate to outbursts and how am I, he, in understanding his own feelings be able to intervene in that process before it blows essentially.

Mr Stuart McMillan told my Investigation Officer that he kept notes on the sessions with child X and displayed a sheet with a brief summary. The brief summary prepared by Mr Stuart McMillan identified sessions were provided on the following dates in the following areas using the Room 14 Social Language program:

- 29 August 2007 – getting to know him; story of incident in class; 'body clues'(resource from Resourceful Adolescent Program). Areas covered Essential Learnings in the NTCF¹¹³: Inner Learner¹¹⁴ 1¹¹⁵, Band 1 & 2; In 2¹¹⁶, Band 1; In 3¹¹⁷, Band 1 & 3

¹¹³ NT Curriculum Framework. Essential Learnings is a set of learning outcomes developed by DET. Domains include the Inner Learner, Creative Learner, Collaborative Learner and Constructive Learner.

¹¹⁴ *Who am I and where am I going?*

¹¹⁵ *In 1 – Uses own learning preferences and meta-cognitive processes to optimise learning.*

¹¹⁶ *In 2 – Identifies and actively develops their natural talents, self-worth and learned skills to pursue and achieve their personal goals.*

- 3 September 2007 – Drew a happy green face also a picture of people saying nice things to each other, smiling faces, a ‘no bullying’ sign. Resource used Room 14 Unit 3 Handling your Feelings – Lesson 1 – identifying/knowing how you feel. Asked him to keep a journal ie draw feelings each day. In 1 Bands 1 & 2.
- 10 September 2007 – Lesson 2 Feelings – Room 14. Looked at his journal & talked about his feelings. Owning feelings, making I statements, talking to someone about how we feel. In 3 Band 1 and some 2; In 4¹¹⁸ Band 1 & 2
- 17 September 2007 – Lesson 3 When You’re Angry – Room 14. Recognising feelings & realising there are choices about responding to these feelings. X said he was happy every day this week. Inner Learner band levels stated above.
- 24 September 2007 – Lesson 4 When You’re Afraid – Room 14. Talked about the difference between real fear and things that ‘might’ happen or might not. What to do when bullying happens – school policy/processes. Col 2¹¹⁹ Band 1 & some 2

Some coverage of Health & PE learning areas – Enhancing Personal Development & Relationships some Band 1 & 2.

Mr Stuart McMillan stated that the brief summary was typed from the notes he kept in his diary, which was accessed by my Investigation Officer through the issue of a Notice to Produce. In reviewing the diary notes reference was made to *Current book Stiffy’s wet dreams etc...*, which was recorded directly under the notes for child X. The note book was titled *2007 HDPS small amount 2008*. I can not see the relevance of such a reference with respect to, at the time, the voluntary role of the Pastor within Humpty Doo Primary School. Complainant C the mother of child X informed my office by email following receipt of the draft investigation report:

I think the reference ‘Stiffy’s wet dreams etc could have been about discussion relating to the book the teacher JW was reading to the grade 4/5 class..... I would also like to point out that this discussion would have went way outside the role of ‘pastoral care’ that he was apparently providing.

Enquiries to the Australian distributor revealed a Speech Pathologist developed the program and the expectation would be that a professional deliver the program to students. Detail in relation to the Room 14 program was outlined in section 12.4.2.1 of this report. Professional qualifications as a teacher or health professional would be required to deliver the program, of which Mr Stuart McMillan had neither. Mr Stuart McMillan at the time was engaged as a volunteer.

With respect to the sessions it was claimed by Ms FH, Principal, Ms JW, child X’s teacher and Mr Stuart McMillan (Pastor at the time) that child X was improving. Complainant C, the mother, did not see this improvement in child X; particularly as further incidents occurred within the school during the time child X was attending the one-on-one sessions with Mr Stuart McMillan. Mr Stuart McMillan’s diary notes stated on 6 September 2007, child X *hit girl? whats the story? no report? Graeme*. A further entry on 24 September 2007 in the diary

¹¹⁷ In 3 - Makes decisions and takes actions based on personal values and principles that reflect empathy and integrity.

¹¹⁸ In 4 – Assesses their well-being and takes action for healthy living.

¹¹⁹ Col 2 (Collaborative Learner) – Uses constructive strategies to resolve conflict.

note recorded *Email child X's Parents. tantrum last week he didn't mention*. These notes are considered to support the claims of child X's mother that there were continuing issues with child X. The non-inclusion of the diary entries in the brief summary presented by Mr Stuart McMillan to child X's parents may be considered to constitute a partial disclosure of information possessed by Mr McMillan.

On the mother establishing Mr Stuart McMillan was providing services to her son as a pastor and not a health professional she ceased the service and took her child to a doctor who referred the child to a psychologist. It was following contact with the Clinical Psychologist that the child was diagnosed with Aspergers Syndrome a form of autism. The Clinical Psychologist's assessment of the chaplain's one-on-one service was described as encroaching in a professional area of which the chaplain did not possess the required qualifications. In an email to my investigator dated 28 August 2008 by the child psychologist he stated:

Mr McMillan, with the support of Ms Garrigan (from evidence in emails sent to Complainant C), continues to engage in counselling and therapy with children in NT schools. I have the most grave concerns about not only his involvement with these children, but Ms Garrigan's unquestioning support of this inappropriate intervention by an unqualified person. I have also attached a brief version of my CV to this letter for your information to support my contention that I am qualified to make a determination of whether Mr McMillan has been engaged in activities well beyond pastoral care.

In Ms FH's signed transcript¹²⁰ obtained by Mr Roger Newman she said child X was referred to Mr Stuart McMillan for '*anger management*'. Ms FH's transcript also stated she sent a letter on 30 November 2007 to the complainant and her husband on child X's positive improvement. Timing is interesting given the sessions between child X and Mr Stuart McMillan concluded on 24 September 2007. Ms JW during her interview with my office confirmed that child X was referred to Mr Stuart McMillan *basically to look at some anger management issues*. However it was also noted during her interview with my office that Ms JW acknowledged:

... Now think tank is just a process within the behaviour management so we're not dealing with the average run of the mill child in terms of behaviour and that's a pattern which I've observed personally and professionally since he was in transition.

Given this assessment it is extremely concerning child X was referred for one-on-one sessions to the volunteer Pastor for which he was not qualified. The DET Executive were clear with respect to their position on one-on-one sessions. However I can only conclude there were insufficient guidelines and communication.

The actions taken by Humpty Doo Primary School with respect to the referral of child X are unacceptable particularly as Ms FH's had prior knowledge of child X and the reason for referring this child to a volunteer Pastor.

DET's new policy and guidelines introduced in 2009 are more prescriptive with respect to the one-on-one sessions.

¹²⁰ Dated 19 March 2008, prepared for the purpose of the investigation undertaken by Mr Roger Newman for DET.

Other students

A notice to produce diaries, notes on students and other documentation relevant to the investigation was issued to each of the chaplains, Mr Stuart McMillan, Ms Roslyn McMillan and Mr Jason Purugganan. As a result information provided by the chaplains included student files/documents for one-on-one sessions conducted with other students.

In reviewing the school diary notes provided to my office by the chaplains, information representing some of the one-on-one sessions requiring further consideration have been included in Appendix 1. The Appendix has only been made available to the DET Executive for their consideration; this is to protect the confidentiality and privacy of the children identified within the chaplain's notes. The names of the children have been removed from Appendix 1, however there is concern that parents and their children may be able to identify the children from the details provided.

In addition to the specific details contained in Appendix 1 on 11 September 2008, Mr Stuart McMillan recorded in his school notes that he met with Ms FH and Mr GM. The notes recorded:

To advise that DET have said I am not to come back to Humpty Doo School Grounds – suspend – That the program must not operate for the rest of the year. And if they still want chaplaincy next year they get a new chaplain. Felicity is to manage this, without publicity and reference to DET. This is in the interests of the Wellbeing of the teachers. Would I be prepared to 'stand down' for the wellbeing of the teachers. We will meet in the THS Chaplain room on Tuesday...

At a meeting held on the Tuesday with Mr TM¹²¹, Ms JW¹²², Ms FH¹²³ and Mr Stuart McMillan the matter was discussed further. The notes recorded by Mr Stuart McMillan during this meeting were:

- *Cluster to say to DET support for schools*
- *While the Ombudsman inquiry no discussion whilst investigated*
- *School Council asking question of DET. Jenny to talk to James Burke¹²⁴.*
- *Chris Hancock¹²⁵ to Staff Meetings.*

Mr Stuart McMillan's notes further stated on 18 September 2008:

EAS down Friday 9am Union Friday pm. Don't come on grounds @ least to next term... On 26 September 2008 the notes recorded Graeme advises Kevin Gillen not happy.. Coming over to HS → not repeatable.

I find it interesting that although Mr Stuart McMillan had been instructed as per his notes:

I am not to come back to Humpty Doo School Grounds – suspend – That the program must not operate for the rest of the year.

¹²¹ Humpty Doo Primary School Council Chair.

¹²² Humpty Doo Primary School Teacher.

¹²³ Humpty Doo Primary School Principal.

¹²⁴ Formerly Member of Parliament for the Brennan electorate.

¹²⁵ At the time worked in the Human Resources section of DET.

He continued to provide a one-on-one service to the student recorded as the second last entry in Appendix 1 for Humpty Doo Primary School on 27/10/08, 17/11/08 and 01/12/08. The notes indicated that the school referred the student to Mr Stuart McMillan, which would have been against DET's directives. By Mr Stuart McMillan continuing to provide one-on-one chaplaincy services to a student during a time he identified as being suspended from the school may be considered as blatantly acting against the directives of DET. By these actions it could reasonably be concluded that Mr Stuart McMillan was in breach of the NSCP Code of Conduct.

Discussion

In order to establish whether the chaplains/pastors have provided services within the boundaries of their role it was necessary to examine the meaning of school chaplaincy service in an Australian context. School chaplaincy service as defined in the NSCP Guidelines stated:

Services which aim to assist schools and their communities through providing greater pastoral care, general religious and personal advice and comfort to all students and staff...

The definition for pastoral care was not included within the NSCP Guidelines and so a meaning was extracted from the website of the Pastoral Care Council of the Australian Capital Territory:

Pastoral care is the offering of emotional support and spiritual care through helping people connect with their own inner and community resources. Pastoral carer offers a friendship that is intentionally seeking to 'walk with you along your path'... Pastoral care is offered by the presence of someone who will listen to you and compassionately support you... Pastoral care is provided by approved trained carers in institutions and the community¹²⁶.

Due to the nominal level of information available on pastoral care in an educational context a definition was found for a chaplain providing pastoral care in a healthcare context:

A Chaplain is most often formally qualified in theology, ministry and / or pastoral care – usually ordained, but if not has a tertiary or other recognised qualification, is licensed by a religious organisation and approved by the healthcare institution in which they intend to practice pastoral care. A pastoral care worker within a healthcare context, while not necessarily formally trained or ordained by a religious organisation, will usually have a minimum level of certificate, diploma or degree training or be undergoing training in pastoral care or clinical pastoral education. They will also have the approval of their respective religious organisation and the healthcare institution in which they intend to practice pastoral care. Chaplains and pastoral care workers, more often than not, have also been trained and had substantial experience in another field (eg, nursing, teaching, social work, allied health, etc) prior to undertaking pastoral care.¹²⁷

¹²⁶ <http://www.pastoralcareact.org>

¹²⁷ <http://www.caresearch.com.au/caresearch/ProfessionalGroups/PastoralCareWorkers/tabid/880/Default.aspx>
(CareSearch *palliative care knowledge network* is an online resource consolidating evidence-based and quality information for various groups within the palliative care community. The website has been funded by the Australian Government as part of the National Palliative Care Program.)

Clinical Pastoral Education is designed to introduce the experience of pastoral care, and the nature, scope and philosophy of pastoral care. It includes¹²⁸:

- *What is pastoral care today?*
- *The uniqueness of pastoral care*
- *An initial look at the philosophy underlying pastoral care*
- *Basic communication skills including empathy*
- *Action/reflection processes*
- *The relationship of thought, feeling and action*
- *Group work with a practical component*

Mr Jason Purugganan and Ms Roslyn McMillan have both completed tertiary qualifications in education and the Basic Unit of Clinical Pastoral Education, in addition to other workshops. However when considering Mr Stuart McMillan's qualifications with respect to his chaplaincy role there is no underlying professional qualification only short workshops. Mr Stuart McMillan has not completed the Basic Unit of Clinical Pastoral Education as at the time of conducting this investigation. In examining the student notes recorded by the chaplains it was quite concerning that someone who has completed workshops conducted over a couple of days/weeks has been entrusted with the types of issues being referred by the schools.

I consider the chaplains to be doing more than listening to the students' problems and believe there has been an obvious level of attempted intervention. Given the seriousness of some of these problems, as the chaplains are not trained counsellors, psychologists or therapists it would be very easy for them to miss indicators with serious consequences for the students. On 6 December 2007 Mr Stuart McMillan recorded in his notes for a Humpty Doo Primary School student *Met with CE¹²⁹ & – Personally don't feel necessary report to FACS → not physical violence fear of what might be....* The notes further identified:

..Dad gets drunk yells at him & hits him with open hand threatens to knock him out...He is 'frightened'... Mums boyfriend used to hit him with a cricket & baseball bat.. But he's done something got help & is OK now... He (the student) is depressed he says, cant see a way out if he talks to mum & dad finds out he'll be in trouble... ..Didn't go to fell out of tree...Doesn't feel safe ...Everybody got drunk & dad yelled at him... Still courage to tell mum what's been happening.

This type of discretionary power by the chaplains which involves advice to refer or not to refer a matter to FACS or any other professional is quite concerning particularly when the primary duty of care remains with the respective schools.

Other referencing within Mr Stuart McMillan's notes which caused concern included *CBT* (Cognitive Behaviour Therapy) *techniques*, positive behaviour modification, students with the condition ADHD and Autism, in addition to physical symptoms displayed by the students. Symptoms and signs recorded include loss of appetite, inability to sleep, vomiting, bruising, withdrawal, loss of memory, feeling of hopelessness in addition to suicidal ideations and other revelations.

¹²⁸ <http://www.pastoralcareact.org/cpe/default.html>

¹²⁹ Assistant Principal at the time.

The student notes kept by Mr Stuart McMillan and the other chaplains also suggested that students had been referred to the chaplains for behavioural issues by the schools which, as was demonstrated in the notes, generally stemmed from deeper issues. This practice has been contrary to the expectations of Mr Kevin Gillan who told my Investigation Officer:

my expectation would be that the Principal would ensure that students with emotional and behavioural difficulties would be recommended to be seen by one of our professional people that have expertise in that area, not a school chaplain.

It should also be noted that Mr Jason Purugganan's student notes recorded he commenced providing one-on-one pastoral care sessions to students prior to completing his Clinical Pastoral Education in June 2008. One could therefore question whether he was qualified to provide pastoral care to students prior to June 2008. If not, then it is considered that clause 10 of the NSCP Code of Conduct *Will not perform professional or religious services for which they are not qualified* was breached.

On the face of the information recorded in the respective chaplains' students' notes it would appear that many matters should have been referred to the school counsellor, medical practitioner or a child psychologist however this is something to be determined by an expert clinician.

12.4.2.8 Group sessions

In considering the various group sessions provided by the chaplains to the schools the following information was reviewed.

Mr Stuart McMillan

Seasons for Growth

Mr Stuart McMillan told my Investigation Officer that he had not undertaken Seasons for Growth training but said his professional development in assisting with suicide intervention more than qualified him for the delivery of the program. In reviewing the training requirements for the delivery of this program it was established that a person must have specific training in Seasons for Growth and *only trained companions can order and use Seasons for Growth Materials*¹³⁰.

Resourceful Adolescent Program, building resilience in young adolescents

Mr Stuart McMillan said during his interview with my office *I haven't done any particular training except to deliver it.* In reviewing the training and professional requirements of this program it was established that two levels of accreditation are available *Facilitator* and *Co-ordinator*. A *Facilitator* must be a psychologist, school counsellor, teacher or community worker. *Facilitator* training allows you to conduct the Resourceful Adolescent Program for which you have trained. *Co-ordinator* training and running at least one program enables running the program and supervising others.¹³¹

¹³⁰ [http://www.goodgrief.org.au/Seasons forGrowth/GetInvolved/tabid/68/Default...](http://www.goodgrief.org.au/Seasons%20for%20Growth/GetInvolved/tabid/68/Default...)

¹³¹ http://mhws.agca.com.au/mmppi_detail.php?id=32

Resourceful Adolescent Program – Parents

In reviewing Mr Stuart McMillan's resume and qualifications provided to my office it was established that he had no specific training with respect to this program. Mr Stuart McMillan told my office that he had not delivered this program.

Boundaries with Kids

Mr Stuart McMillan said he did not have specific training, however has delivered *Boundaries with Kids over long periods of time but never through the chaplaincy program*. In reviewing specific training requirements these could not be established as *Boundaries with Kids* is a literature based resource.

Boundaries with Teens for Parents

In my office questioning Mr Stuart McMillan about this program it was established that similar to *Boundaries with Kids* it is a literature based resource with no specific training requirement; however Mr McMillan said *We haven't ever delivered that. They are resources that we have shared with parents.*

Ms Roslyn McMillan

Seasons for Growth

During her interview with my office Ms Roslyn McMillan said that she had completed the specific training and has delivered the program as a qualified person. A review of Ms Roslyn McMillan's Seasons for Growth Certificate of Accreditation issued in 2004 confirms her initial training. However the Certificate authorises Ms Roslyn McMillan to conduct the Seasons for Growth program for a period of two years expiring in 2006. Funding applications were dated 2007 therefore at that time Ms Roslyn McMillan was not an authorised person to conduct the program.

Resourceful Adolescent Program, building resilience in young adolescents/ Resourceful Adolescent Program – Parents

It was confirmed both through Ms Roslyn McMillan's interview with my office and review of her qualifications that training was obtained as a *Facilitator*. However as discussed earlier a *Facilitator* must be a psychologist, school counsellor, teacher or community worker¹³². For the purposes of this section it should be acknowledged that Ms Roslyn McMillan has been working as a chaplain and not as a teacher. Mr Kevin Gillan told my office:

We made it very clear that our chaplains were not counsellors and even if they were qualified counsellors they weren't engaged as such, they were engaged as chaplains.

I would assume to extend this sentiment to teaching qualifications, the chaplains are engaged as chaplains not as teachers or community workers.

¹³² http://mhws.agca.com.au/mmppi_detail.php?id=32

Real Justice Conferencing Conflict and Dispute Resolution

Ms Roslyn McMillan told my Investigation Officer that she had not undertaken any specific training in relation to this program.

Boundaries with Kids/Boundaries with Teens for Parents

In questioning Ms Roslyn McMillan about these two nominated programs she confirmed she hadn't undertaken any training but she had read the books and *Boundaries with Kids* had been delivered through the church and offered to the community. With respect to *Boundaries with Teens for Parents we have loaned parents who might be having problems with their kids the book to read for clues...*

Mr Jason Purugganan

Seasons for Growth

Mr Jason Purugganan told my Investigation Officer that he did not have any training in this program nor had he delivered it.

Resourceful Adolescent Program, building resilience in young adolescents/ Resourceful Adolescent Program – Parents

Mr Jason Purugganan told my Investigation Officer that he did not possess training in these programs nor had he delivered them.

Real Justice Conferencing Conflict and Dispute Resolution

Mr Jason Purugganan stated to my office that he was qualified to provide services in this area although he had not delivered any as yet. Mr Jason Purugganan obtained training in Restorative Justice in 2007.

Boundaries with Kids/Boundaries with Teens for Parents

Mr Jason Purugganan told my office that he had not received any training in these areas nor had he delivered them.

Care Force Life Keys, Meaning and Purpose of Life for Adults?

Mr Jason Purugganan told my office that he had not received any training in these areas nor had he delivered them.

Summary

In considering the various programs delivered and to be delivered it was evident that the chaplains' role, their training and qualifications did not qualify them to provide several of the programs. Each of the Principals stated they had an awareness of program content delivered to their students. The Principals were able to provide a list of criteria for assessing the suitability of program content, one criteria identified by Humpty Doo Primary School being; *deliverer is qualified to provide the program*. However it appeared there were no processes in place within the schools for aligning programs with the respective chaplain qualifications.

It can reasonably be concluded that the Principals failed to ensure the capabilities of the chaplains prior to allowing them to commence the provision of respective programs. Processes should be developed and implemented to review programs to be provided to students and qualifications/training of anyone who delivers these, including the chaplains.

12.4.2.9 Classroom/miscellaneous activities

Parent's expressed frustration because they felt the chaplains were highly visible within the schools and involved themselves in multiple activities. Complainant D said, on addressing her concerns with Mr AC, Principal Taminmin High School, she was told if the chaplains entered her children's classrooms her children would need to leave the room and sit in the office. On 25 February 2008 complainant D said this situation did occur for her daughter. Mr AC described the practices at Taminmin High School as:

I think it says in terms of pastoral care these things happen within their pastoral care classes. So the chaplain would be there. With the specific kids who have, you know, originally opted out of the program we certainly made it very clear that those students could come to us and leave the program so they were comfortable. In relation to the chaplains being in there assisting with pastoral care with our teachers I haven't had any further complaint or issue with that and I don't see it as particularly any different to if I've got the local doctor or policeman or someone from Centrecare or someone in there doing it. And we frequently have visitors talking to classes, you know, from local politicians to people from Ruby Gaea and different things like that.

In response to parental complaints some of the schools stopped chaplains from entering the classrooms. However there were schools which continued to permit the chaplains to assist within the classroom. An example of this included Bees Creek Primary School. Mr Jason Purugganan recorded in his notes that when he assists in the classrooms he is not to assist students without parental/guardian permission. However parents' requests for absolutely no contact, which includes chaplains being in the same classroom as their child, have not been respected. For students to be removed from their classroom due to the presence of a chaplain has given parents the perception that DET places the chaplains above the education of their children. It is considered that in an attempt to resolve parental concerns and ensure student education is first and foremost DET should consider not allowing chaplains to enter the classrooms. Students with parental/guardian permission for attending chaplaincy sessions should be removed from their class to attend the respective sessions.

Several of the schools have also engaged the participation of the chaplains within various activities such as sports days, orientation, big breakfast, etc. The presence of the chaplains within these activities has also been raised as a concern by parents given the chaplains visibility and contact with the students. DET should be reviewing this particular practice and determine whether it is necessary for the chaplains to be present or whether parent or student volunteers would be best placed to provide the same assistance.

12.4.2.10 Claims by Clinical Psychologist

In an email to my office dated 28 August 2008 from the Clinical Psychologist of child X allegations were made against Ms Maree Garrigan, General Manager with respect to a meeting held at DET, Mitchell Centre. Present at the meeting were Ms Maree Garrigan, the

Clinical Psychologist of child X, complainant C, Ms FH, Principal, a Uniting Church representative and Mr Stuart McMillan. The email stated:

At the meeting with Ms Garrigan, I outlined my qualifications and experience, and my opinion that Mr McMillan had gone well beyond pastoral care. Ms Garrigan stated that she disagreed, despite having no psychological qualifications in order to allow her sufficient knowledge to form that conclusion. Ms Garrigan did not address either of the issues I raised about being misrepresented in the DEET report. Ms Garrigan dismissed a raft of concerns raised by me because, according to her statements in that meeting, she supports the Chaplaincy programme. Ms Garrigan failed to see that her personal support for the programme, regardless of her reasons, was not relevant to Mr McMillan's conduct in NT schools.

Ms Maree Garrigan told my Investigation Officer:

Complainant C had actually given her permission for her son to work with him (Mr Stuart McMillan) ... that was the bottom line ... there was a discussion about the consent factor, informed consent and the Clinical Psychologist had sent me some information about their view of informed consent ... prior to that meeting. So once again it was just trying to get the players around and have that discussion. It wasn't a highly successful meeting... The Clinical Psychologist jumped out of his chair and leant over the table to yell in my face because I had asked him to stop and let me finish my sentence.

When interviewed the Clinical Psychologist told my Investigation Officer:

Ms Garrigan made a couple of points in that meeting, of that.. was concerning. Firstly she disagreed with me that Mr McMillan was providing psychological services. I explained my full qualifications and experience at that meeting and she said, in her opinion, I was wrong. I'm not sure what Ms Garrigan's psychological qualifications are ...

... in her opinion, there were two things, firstly, ... it wasn't psychological services and, secondly, she stated that in schools that she's worked at ... the aids provide very similar support, which I actually found concerning because teacher's aids don't have qualifications in counselling either and she was talking about how that they go through things like physiological arousal with children and those sorts of things in the schools she's been in.

In the DET response Ms Maree Garrigan replied:

I at no time in the meeting declared my support or otherwise for the chaplaincy program as my personal views were not relevant to the discussion. I also do not believe I agreed or disagreed with the Clinical Psychologist what determined psychological services. I was not made aware at any point prior to the meeting that the Clinical Psychologist would be present. Should this have been the case I would have structured the meeting differently and possibly included a departmental psychologist. Once again the purpose of the meeting was to determine what the chaplain had covered in his individual sessions with the complainant's son.

The Clinical Psychologist is qualified both as a Clinical Psychologist and Neuropsychologist who was trained in New South Wales and lectured at Charles Sturt University from 2000 to

2005. In 2006 the Clinical Psychologist relocated to the Northern Territory to take up a lecturing position with Charles Darwin University. In early 2008 the Clinical Psychologist left academia to concentrate on full time private practice. He has specialised training and experience in the assessment of children, adolescents and families in both clinical and legal contexts, as well as in neuropsychological assessment of children and adolescents. The Clinical Psychologist possesses a Bachelor of Psychology (Honours)(1st class), Doctor of Philosophy (Clinical Psychology/Clinical Neuropsychology) and a Graduate Certificate in Education. Since obtaining his Psychology Honours degree, the Clinical Psychologist has worked in a variety of contexts in New South Wales and the Northern Territory. These include clinical assessment and intervention with clients, families and children in a family alcohol and drug rehabilitation centre and consultancies. This is in addition to consultancies for private clients in assessment, diagnosis and intervention of autism spectrum disorders and developmental issues in family and school environments. The Clinical Psychologist is a member of the following professional associations:

- Australian Society for the Study of Brain Impairment
- Australasian Human Development Association
- Association for Psychological Science (formerly the American Psychological Society)
- International Neuropsychological Society
- Society for Research in Child Development
- Australian Association for Cognitive and Behaviour Therapy
- Australian Psychological Society

Given the Clinical Psychologist's qualifications and experience I am surprised that Ms Maree Garrigan did not accept what was being suggested. The minimum action I would have reasonably expected from Ms Garrigan is to have the matter referred to a clinical expert for opinion.

12.4.2.11 Claims relating to NAPCAN

Complainant C and the Child Psychologist said Mr Stuart McMillan represented himself as being funded by NAPCAN to provide parenting skills programs to the community at a meeting they attended. Present at the meeting were Ms Maree Garrigan, the Clinical Psychologist of child X, complainant C, Ms FH, Principal, a Uniting Church representative and Mr Stuart McMillan.

An email dated 27 August 2008 by Ms Maree Garrigan stated that Mr Stuart McMillan did not misrepresent NAPCAN and funding was for childcare services provided during parent programs delivered by the Living Waters Church. Ms Garrigan told my Investigation Officer:

I actually did some investigation with that once again and I can't remember the detail of that but I did follow up because he, the way it was understood what he said was actually not what had actually happened in relation to NAPCAN. My understanding is that they didn't, they're not allowed to deliver NAPCAN material but they had been liaising with NAPCAN. I can't remember the detail of that once again... My understanding was, what complainant C understood he said, was that he was acting on behalf of NAPCAN. What I understood he said was that he was aware of the NAPCAN materials or, I can't remember it but he had some liaison

with NAPCAN. I didn't take away from that meeting and neither did, I checked with a couple of other people, they didn't take that away either.

Mr Stuart McMillan denied making the representation. He said he was misquoted:

...they were asking about my expertise to work with children. It was where the questioning was around at the time and I made a statement about the boundaries with kid's courses that our church had operated for parents ... So we've received some NAPCAN finances which supported us to provide childcare... in ... the Family Day Care Centre next to the church buildings so that Mum's who wanted to participate in that course could put their young ones in there and know that they were safe and be able to do the course. So I know I was misquoted or it was misconstrued that I said we were running a NAPCAN course. I never said we were running a NAPCAN course I said we... were successful in a grant submission that provided that childcare.

When Ms Roslyn McMillan was asked about her training in Boundaries with Kids she said:

*I haven't done training in that but we've read the books and we have delivered programs through our church and offered it to the community. **We actually got funding from, who was it? NAPCAN to deliver that program** and we used their funding to buy the books so that we could give the books to the parents.*

Complainants C and A provided my office with emails¹³³ containing enquiries made to NAPCAN. The response received stated:

I am unsure if the church received a NAPCAN MicroGrant for Child Protection Week - as this program was run by K... who also works in NAPCAN ... I am VERY curious, because there is no NAPCAN parenting program that I am aware of... Only NAPCAN staff and designated representatives can refer to themselves as delivering any NAPCAN programs.

Why did Mr Stuart McMillan mention NAPCAN at all when asked about his skills and experience with parenting programs if the funding was only received for childcare? It is also interesting that his wife Ms Roslyn McMillan told my office that the NAPCAN funds were received **to deliver that program** (Boundaries with Kids) and were used to purchase books for parents as opposed to childcare. The most likely inference is that Mr Stuart McMillan raised the topic of NAPCAN funding in the respective meeting to influence those in attendance. As was described by Ms Maree Garrigan the meeting became heated and perhaps Mr Stuart McMillan felt confronted, however this would be no excuse.

¹³³ Emails dated 18 and 19 August 2008 – support communications with NAPCAN.

Issue 5. The role of the chaplain within the Wellbeing Team and accessibility to this team by students

Each of the schools appeared to have their own wellbeing team consisting of various positions depending on the school. Generally the schools wellbeing team consisted of the Principal, Assistant Principal, Special Education Teacher, Wellbeing Officer and chaplain/s. Some schools operated informally where the team met as the need arose whereas others such as Taminmin High School operated more formally. Taminmin High School was the only school which had a wellbeing team consisting of a School Counsellor, School Based Police Officer, Health Promoting School Nurse, Home Liaison Officer, Aboriginal Islander Education Worker and the chaplains¹³⁴. Within the high school there were wellbeing team meetings for the middle school and for senior school. Historically the primary schools which feed into Taminmin High School relied on the School Counsellor attached to the high school wellbeing team. For the purposes of this investigation the wellbeing team operating within Taminmin High School will be considered.

Mr AC, Principal Taminmin High School said that the chaplains attended the vast majority of discussions about the students including those whose parents had not consented to the chaplaincy service. *Normally our wellbeing team meet once a week in both middle and senior schools ...* The exception to this had been where parents made specific requests of no contact with the chaplains or chaplaincy service. Mr AC relied on the chaplains' confidentiality agreement with respect to the wellbeing team meetings and explained:

Back through our wellbeing meetings, usually what happens ... is that the students that anybody has dealt with within our wellbeing sector are ... discussed there because if we're seeing an escalation or something where a student might require specific counselling well then a counsellor could be directed ... to take that role.

The Principal does not attend the meetings, Mr AC told my Investigation Officer that these meetings were attended by the Assistant Principals.

In establishing the role of the chaplains on the wellbeing team for the senior school, Ms RM Assistant Principal said that either Mr Stuart McMillan or Mr Jason Purugganan would sit in on the meetings:

They just sit quietly and if they had anything to report they would but because they haven't been involved in anything to do with senior school ...

As mentioned earlier in the report one-on-one services were not provided to senior school students within Taminmin High School and there was little need for the chaplains to attend the wellbeing team meeting. Ms RM said:

I think they just come to just be a supportive person there if the need ever arose that, you know, something traumatic happened right across the school there... they may report something on a junior student, something that's happened in the family in the junior, with a junior student that may impact on a senior student. At odd times there has been that where the family has broken up, they've reported

¹³⁴ As advised by Mr AC, Principal during his interview with my office.

that the family has broken up and then we've gone and supported the older person in the family. But that's through my wellbeing team.

In describing the role of the wellbeing team Ms RM said:

Well family break ups... we have our wellbeing team put together teams that work with students that have had recent family break ups, ones that have had ongoing problems with family break ups our counsellor is fantastic with and they develop very good skills, coping skills. But the ones that have recent ones in our senior school ... we usually put together a team, the chaplaincy is not there enough for me to have them part of the team so they're not part of that team.

In obtaining details about the wellbeing team meetings held for the middle school, Ms MM told my Investigation Officer she was the Co-ordinator for the wellbeing team, however did not sit in on the sessions and that:

... every week we have the wellbeing team meeting and it depends on, sometimes its very confidential, so you don't, so if it's a general thing you monitor by just looking at the progress of the student and it might be with a counsellor or the home liaison or the indigenous officer. Generally with the chaplaincy, if they've got an individual ... they will do an email back to me and report on the progress, or if they've been into a classroom observing a student...

When asked about the general content of the wellbeing meetings, Ms MM said confidential information was not discussed *If there's anything confidential for anything like that then of course not.*

In reviewing the notes relating to the wellbeing team meetings an extract from Mr Jason Purugganan's records on 27 August 2008 confirmed the content of students' situations are discussed in detail. However in reviewing Mr Stuart McMillan's records one notebook was kept for the middle school and another for the senior school. Names of students discussed were recorded alongside issues identified. Brief examples of issues included within the middle school notebook between September 2008 and August 2009 were as follows:

- Sexual assault and perceived fabrication of this;
- *Check 200- notes got ---yr old sister to perform oral sex;*
- On 4 March 2009 complainant D's daughter's name was recorded in the notes (this was following an acknowledgement by Mr AC, Principal not to have complainant D's children discussed in the presence of the chaplains);
- *--- selling pornography (perhaps will be charged);*
- *--- suicidal Parent conflict – angry hitting...;*

Contrary to Ms MM's belief the examples above demonstrate the highly sensitive nature of what has been discussed during the middle school wellbeing team meetings. In addition to this there appears to be a continuous lack of communication with respect to the wishes of complainant D of no contact or discussion about her children in front of the chaplain.

When examining the senior school note book with respect to wellbeing team meetings specific names of students were identified and issues were recorded. The following were

examples of some of the issues recorded in Mr Stuart McMillan's notebook between September 2008 and August 2009:

- List of student names – *cutting classes – need follow up;*
- *...Always stoned, sexual beh – shocking;*
- *... history of depression...;*
- Daughter of complainant A referred to (*pulled out from THS*) during meeting held 11 February 2009 (this was following strong parental objections about chaplains having anything to do with the complainant's children);
- *... out of control; beh putting kids in class @ risk;*
- *...believed of bringing in drugs in sch.;*
- *...showing early manifestations of psychosis;*

The examples above demonstrate that information of a highly sensitive nature were also discussed during the senior school wellbeing team meetings.

The chaplains were not or are not employees of the school and have no automatic right to the highly sensitive information about students. I question why they have been privy to the highly sensitive details of all students discussed during the wellbeing team meetings when parental consent had not been obtained.

Complainant D raised concerns about her children's access to the wellbeing team given the chaplains participation on the team. In addressing her concerns in 2008 with Mr AC, Principal the complainant formed the belief her children would not receive the support necessary due to the chaplain's membership of the wellbeing team. Mr AC said he told the complainant:

...lots of things are discussed in the wellbeing team and we would try to observe her wishes that her kids issues weren't discussed with the, specifically weren't discussed with the chaplains...

Mr AC clarified that he would require the chaplains to step out of the wellbeing team meeting *if there was a specific discussion regarding the welfare of the kids...* However as identified above, Mr Stuart McMillan's middle school wellbeing team notes showed that some time after the discussion between the complainant and Mr AC the complainant's daughter was discussed in the presence of Mr McMillan. Considering in 2007 complainant D gave Mr Stuart McMillan a letter of no contact with her children he should have been aware of the complainant's request, yet he did not excuse himself from the meeting and proceeded to record the child's name in his diary. This type of conduct by Mr Stuart McMillan appears to be inconsistent with the essence of the NSCP Guidelines and Code of Conduct to respect parental views and requests.

Issue 6. Funding conditions & agreements, and compliance with these

Applications for NSCP funding were submitted by each of the schools considered within the scope of this investigation. This section of the report considers the application process for each of the schools, why Living Waters Chaplaincy Service was nominated within the applications, the content of the application forms, the power of the school councils and Principals and payment of the approved funds.

12.6.1 Application process for NSCP funding

Each of the School Principals, Bees Creek, Humpty Doo, Berry Springs, Girraween and Taminmin agreed they had prepared their schools NSCP funding application in group consultation. Mr AC, Principal Taminmin High School recalled that the rural schools met and said:

So we met, and I believe we met at Taminmin if my memory serves me correctly and we had a discussion about the program. And then there was some shared material about some of the things to go in here, some of the information that had come from the Bureau of Statistics and then we went away and wrote them and then worked it through with our school councils, signatories and the funding body, who I believe we dealt with ... whoever Stuart's immediate superior¹³⁵ was within the Uniting Church.

The School Principals agreed that information for the applications was in part provided by one or more of the chaplains. When asked what information was provided by the chaplains, three of the Principals recalled it was the statement of qualifications. One of these Principals, Mr AC¹³⁶ could not recall with certainty but suggested the statistics used in the application could have been provided by the chaplains. Mr Stuart McMillan told my Investigation Officer:

The Principals of each of the schools did the application. Obviously we worked with them because it was a collaborative in the sense that each school has to apply separately, that's the way the funding works, the program works, but you were able to submit what they called collaborative applications. So in each individual school's application there was reference to the other schools in the area that were also making application.

With respect to the actual content Mr Stuart McMillan could not recall as he said it was too long ago. In my office questioning Ms Roslyn McMillan she said:

I think I gave them some information about the community that was based on a submission that we had put in six months earlier for some federal money to staff the Meeting Place, the emergency accommodation place because at that stage, about six months earlier, we were thinking of having it as a youth based facility so the services could be provided to youth. So we wanted youth workers basically. And for that application we'd have to research and get information about the rural area

¹³⁵ The immediate supervisor referred to was Reverend Felicity Amery of the Uniting Church.

¹³⁶ Principal, Taminmin High School.

population and that sort of stuff, living conditions and so on and so on. So I think I gave them copies of that information.

Each of the Principals also indicated they were aware of the NSCP guidelines at the time of completing the funding application. One parent did allege that the Principal of Humpty Doo Primary School was not aware of the guidelines at the time of preparing the funding application, however, there was insufficient evidence to support this.

The funding applications were summarised in the following table:

School	School Principal	Parent Body/ School Governing Body	Religious Institution, Approved Chaplaincy Provider or Other	Date application signed by school
Berry Springs Primary School	Ms SD	Ms TM Chairperson School Council	Rev Felicity Amery Uniting Church	27/03/2007
Humpty Doo Primary School	Ms FH	Mr EM Chairperson School Council	Rev Felicity Amery Uniting Church	29/03/2007 (Principal) 03/04/2007 (Chairperson)
Bees Creek Primary School	Mr JT	Mr MB Chairperson School Council	Rev Felicity Amery Uniting Church	28/03/2007
Girraween Primary School	Ms MB	Ms ZL Chairperson School Council	Unsigned but recorded as Rev Felicity Amery Uniting Church	26/03/2007 (Principal) Undated (Chairperson)
Taminmin High School	Mr AC	Ms DW Chairperson School Council	Rev Felicity Amery Uniting Church	30/03/2007

Prior to examining the application processes adopted by each of the schools I considered it necessary to establish why each of the schools nominated the Living Waters Chaplaincy Service.

12.6.1.1 Why was Living Waters Chaplaincy Service nominated for the NSCP?

During a discussion¹³⁷ conducted between the Principals of the five rural schools¹³⁸ the Living Waters Chaplaincy Service chaplains were nominated within each of the funding applications. Mr AC, Principal, told my office:

The council sort of, as we do, said oh here's a funding source, can this assist what we do. It was in the light of the school community that doesn't have any close..... support services around it, our nearest support service is at Palmerston. And I believe there was a discussion there, we talked to Living Waters who were doing an existing one and then there was, I think, then came the discussions with the other schools in the rural area and I think it happened pretty much by discussion then that it would be a good idea if Living Waters took it on because it would be very

¹³⁷ Information identified during individual interviews with the five rural school principals and my office.

¹³⁸ Berry Springs Primary School, Humpty Doo Primary School, Bees Creek Primary School, Girraween Primary School and Taminmin High School.

difficult for that to be coordinated within any one school, it would be much easier to have the single source.

The various other reasons provided by the Principals during their interviews with my office included:

- the primary schools were feeder schools into Taminmin High School therefore they sought consistency of chaplains for the students;
- the chaplains were currently predominantly providing services to Taminmin High School, which Taminmin High School were happy with;
- chaplain/s known by the schools and community.

Mr AC, Principal, said that other denominations had not been considered as Living Waters was providing an existing service and he had previously had an ill experience with another close-by religious group.

Ms SD, Principal, recalled the Howard Springs Primary School Principal was not interested in Living Waters Chaplaincy Service as there was a church next door which already had an involvement with their school.

Witnesses that were part of the respective school councils at the time could not recall any genuine consideration of other denominations by the Principals or school councils for the provision of the chaplaincy service.

Ms Roslyn McMillan told my Investigation Officer that the Principals of Berry Springs Primary School and Girraween Primary School approached her to be part of the NSCP as she had been providing a Kids Club service to those schools.

It was established that there was no consultation with anyone other than the Principals to decide that the Living Waters Chaplaincy Service (as opposed to other denominations) would be nominated.

At the time of submitting the funding application the NSCP Guidelines obviously did not apply to the schools, as implementation followed the application process. At the time of submitting the funding application the 2004 Guidelines for Chaplaincies in Northern Territory Government Schools were considered applicable. Although DET has challenged this in their response to the draft investigation report the fact is that DET were unable to provide my office with a date of withdrawal.

The 2004 guidelines required that the position of chaplain be advertised and the Local Chaplaincy Committee be responsible for the selection of the successful candidate. The Guidelines further stipulated that the Local Chaplaincy Committee will ideally include:

- the Principal or nominee;
- representative of local Christian denominations (***this is questionable given not all students within the schools would be Christians***);
- at least one teacher and one parent from the school council;
- at least two students or recent past students along with other community representatives.

12.6.1.3 Bees Creek Primary School

During his interview with my office Mr JT, Principal said:

I think it came up at initial discussions with the four rural schools when we were looking at whether we would apply for this or not. I think from memory the Uniting Church had been providing chaplaincy support particularly at Taminmin High School which they were very pleased with. So they were very keen to, as I suppose, a known body that was providing good support, keen to just get them on board because they knew it would operate well. And we just agreed with that and moved on.

Well, the way it was indicated by the high school, it was more than satisfactory, they were very pleased with the way they were operating within the wellbeing program within the school. I think from memory they may have also been providing some support for some of the other rural schools, I'm not really sure. So it was matter of, this was an application, this was a good opportunity to provide support, here was a group who had done the job before and it seemed a good way to go about it.

Witness B, who was a school council member between 2007 and 2009, said that Mr Jason Purugganan and Mr Stuart McMillan attended the first school council meeting which discussed the NSCP. The witness said she attended this particular meeting as a note had been sent home to parents stating the chaplaincy programme was to be announced to the school council that night. The witness thought the meeting was conducted around 2007 but could not specifically recall. The witness recalled that to her knowledge there was only one school council meeting which considered the NSCP prior to its implementation. The witness said the chaplains discussed the proposed programs:

like the rock water play program... and involve themselves in lunch time activities and stuff.

The witness felt that there was insufficient consultation with the school council and parents. However the witness stated that *everyone seemed to be happy I guess that they were getting an extra hand in the school.*

12.6.1.4 Berry Springs Primary School

When asked about the consultation undertaken for the NSCP, Ms SD told my office:

I think it was brought up ... at a rural Principals meeting when we first were considering it I think. I can't remember who exactly whether it was AC from Taminmin High School ... but because Ros and Stuart McMillan ... had been working in the wellbeing team at Taminmin High School which is our feeder school and they had been doing an excellent job there. We knew Ros too because she had been teaching RE and I also ... knew her because she had been teaching at Batchelor Area School when I was the Assistant Principal there, she was a senior teacher. So I knew that she was highly regarded as a teacher which is always a good thing ... because they understand how to talk to children and that sort of thing. I didn't know Stuart but because ... they were very highly regarded, we got excellent feed back from Taminmin High School and it was the feeder school for all five schools ... it was thought that this would be a good program, it would be good to use them

for and everyone agreed that we needed some kind of other support ... for children to go to in time of need... if they wanted somebody to talk to. So that was why the Living Waters was chosen, it was basically, from Berry Springs point of view anyway it was because we already knew that they were doing a really good job whereas we didn't know any other chaplains or how they were doing...

Witness F told my Investigation Officer:

...as parents we really didn't have a say in the program, even though there were a lot of parents who were against the program... Petitions were done, surveys were done and even the last survey that the school did, the majority was against, even though there was an even number in the amount of children affected. I questioned the Principal about this and she said, well, we've decided to go for it because the school council felt that the program was needed...

Witness D said that the NSCP was discussed over several school council meetings, the first being around the end of 2006 and at the first meeting there was a presentation:

My understanding of it was that it was a service available to students if there was an emergency like a bus crash... At the time I voted against it because my family aren't Christians...

Witness D said the service was offered as a counselling service:

... it had been offered to the school to be of service if there was a very dramatic incident ...grief counselling actually was something that came up... There was a school council meeting, I can't tell you the date, but it was just, it was two weeks before the meeting where I gave them a list of names. So there was a school council meeting, they said, we don't really know what parents think. I said, why don't we ask them. So SD said that she thought it would be OK to get a list of parents who were either opposed or... supportive of it ... that would be a fair enough way of getting the information.

Witness D said she polled parents in the form of a petition against the NSCP. These results were presented to a special school council meeting held to discuss the chaplaincy service. The witness said the school council was not interested in her results because she didn't meet their requirements. Ms SD told my Investigation Officer that a parent on the council claimed to have been coerced into signing the petition. The witness said she did not coerce any parents into signing but did inform them that:

the people who were running it... were they aware that those people were also running a rehabilitation program for paedophiles in the rural area.

Witness D told my Investigation Officer that all council members were present when voting for the chaplaincy program and all but two supported the program. The school council then conducted their own survey of the parents to measure support. The witness said the majority of parents voted against the program, however the number of children of those voting for the program was close to those voting against. Ms SD said that the:

... school council ... still wanted to go ahead with the chaplaincy service because they were of the view that it was of benefit to students in the school for parents that wanted it.

12.6.1.5 Girraween Primary School

Ms MB told my Investigation Officer *When the Federal Government first offered the grant because Ros had been working.... doing that other work in the school and I've known Ros for a long time she was considered for the NSCP.*

Ms MB clarified that the relationship with Ms Roslyn McMillan was more a long term work relationship rather than a personal one. As the chaplains had already been providing services to the schools Ms MB said:

... it seemed to us as Principals from my recollection that this was a reasonable thing to go with them because they have familiarity, they know the community.

Witness C confirmed that the matter of the chaplaincy service had been brought before the school council for a vote. The witness recalled seconding the nomination in favour of the program and said Ms Roslyn McMillan:

came to our school council meeting and said... hello I'm Ros and are you aware that the government is funding a chaplaincy program and they basically pay for somebody like me to come in and to be a chaplain in your school. And of course everyone thought it may have been a good idea for the simple fact of one extra person in the office that can assist and it was not suggested that we need ... to have a majority, that wanted it, it was simply stated the government funding it, we could do it, thank you very much.

The witness said when she became aware of the chaplains association with the convicted paedophile she changed her mind about the chaplains suitability. As a result the witness commenced a petition and attempted to present this at the next school council meeting, however recalled that Ms Roslyn McMillan and Ms Felicity Amery *beat me to it*. As the witness always attended the meetings a little late due to personal commitments the two ladies had made their presentation to the council prior to the witness arriving. The witness said:

... there was no consultation other than the meeting prior to that. And I had questioned, can we send out a letter, and it was squashed under the table. I was so embarrassed that day because I felt like I was creating problems where they didn't exist and I was nothing but a trouble maker.

Ms MB confirmed that a petition was presented to the school council in the *very first early days* and said that:

It was dealt with through school council, through open conversation and decisions around the school ... changing some procedures... there were only...probably maybe a dozen names on it.

Witness C said that at the school council meeting:

she was questioning, why don't we have a trained counsellor if we have, if we need the program so much because we have troubled children, why aren't we rallying for a trained counsellor. That was one of the arguments Maree gave right at the start, that the only trained counsellor that we had for our children at Girraween was to utilise the one at Taminmin High School. And of course because there was only one person, it was a long waiting list. So it was suggested that that was too hard to get a qualified person so it would be easy to have Ros or Stuart or Jason, who they ended up having at our school, to go in there and have a chat to them about it.

12.6.1.6 Taminmin High School

Mr AC, Principal, told my Investigation Officer:

we had an existing chaplaincy program within our school and through the school council we took up the services provided through the Commonwealth funding which was the National Schools Chaplaincy Program... My recollection of the preparation of this is that the schools met ... I believe we met at Taminmin if my memory serves me correctly and we had a discussion about the program. And then there was some shared material ... and then we went away and wrote them and then worked it through with our school councils, signatories and the funding body

and Mr Stuart McMillan's superior within the Uniting Church at the time, Ms Felicity Amery.

12.6.1.7 Summation of school funding application processes

At the time of preparing the applications DET have assured my office in their response to the draft investigation report that the Guidelines for Chaplaincies in Northern Territory Government Schools 2004 were not applicable. As a result the Principals were not bound by the 2004 Guidelines.

The NSCP funding applications submitted by the School Principals to DEEWR provided the following information in relation to 'School Community Consultation'.

School	Information provided in funding application
Berry Springs Primary School	<i>Information was given on the proposal to School Council members at the Berry Springs School Council February 14 meeting. School Council endorsed the proposed program. School staff endorsed the proposed Chaplaincy program at the staff meeting held Tuesday 20. The program has received support of Local Member of the NT Parliament, Ted Warren, MLA. There has been ongoing consultation, collaboration and agreement with 4 schools in the Palmerston Rural Cluster – Bees Creek Primary, Humpty Doo Primary, Girraween Primary and Taminmin High School. Staff and School Council have been made aware of the code of conduct and staff are familiar with Pastor Ros McMillan as she is a regular visitor to the school in another role.</i>
Girraween Primary School	<i>The Girraween School Community has participated in a number of consultation processes including:</i> <ol style="list-style-type: none"><i>1. Discussion at executive leadership meeting and decision to take to full staff for consultation.</i><i>2. Information and discussion at Staff Meeting with guest speaker from the Chaplaincy Service to outline possibilities, value and answer questions...</i><i>3. Endorsement by full staff at Staff Meeting on 27 February...</i><i>4. School Council meeting discussion and endorsement.</i><i>5. Support of local Parliamentary Member/s.</i> <i>At all meeting and discussion forums there was an acceptance of the faith and denomination of the Service to be used. School Council members and staff have high regard for the excellent and wide ranging work currently being done by Pastors Stuart & Ros McMillan & Living Water Chaplaincy Services within the local community and informally within the school. Staff, parents and community were provided with a copy 'code of conduct' for chaplains.</i>

School	Information provided in funding application
Humpty Doo Primary School	<i>Principal spoke to both school staff and the parents governing body the School Council about the ...NSCP to gauge support. The proposed chaplain, Stuart McMillan then spoke to both groups and endorsement was given for such a program to exist at Humpty Doo Primary School with links to other Darwin rural schools especially the secondary school Taminmin High. Humpty Doo Primary staff and School Council are aware of the 'code of conduct' and are familiar with Pastors Stuart & Ros McMillan & Living Water Chaplaincy Services, therefore they fully endorse the acceptability of faith....</i>
Bees Creek Primary School	<ul style="list-style-type: none"> • School Council meeting 13/3/07 & endorsement • Staff meeting & endorsement 13/3/07 • Support of local member/s • Staff & School Council have been made aware of the 'code of conduct' & are familiar with Pastors Stuart & Ros McMillan & Living Water Chaplaincy Services
Taminmin High School	<i>There is an existing service with a local chaplaincy committee operating for the past 2 years the committee has staff student and school council representation. This is an expansion of the service. Our council has endorsed the service in council minutes of 2005. The expansion has the full support of the executive and this will be noted in the 2007 April minutes. Our March meeting was an AGM and this business had to be held over to a general meeting in April for 2007 endorsement. The role of the school chaplains is well accepted and respected within the school community and it adheres to a code of conduct which is totally concurrent with the code of conduct for this program. Our local member for Goyder is a member of the council and also endorses this service.</i>

DEEWR accepted that the schools had undertaken sufficient consultation with the school communities to acquire the NSCP funding, however did the Principals ensure fairness and equity for their school communities? Although the 2004 Guidelines could be argued not to be applicable at the time, they did attempt to form a fair and equitable procedure for the engagement of chaplains within the schools. Aside from gaining the support of the school council the 2004 Guidelines raised the following:

- *What are the goals and roles for chaplaincy services held by the school community?*
- *How do these match the range of cultural and religious backgrounds represented in the school?*
- *What needs in the school is the chaplaincy expected to meet?*
- *What level of support is there from the school community and other community groups?*

Secondly the 2004 Guidelines stipulated that in appointing a chaplain to a school the *Local Chaplaincy Committee will advertise the position and is responsible for the selection and appointment of the successful candidate...*

Cultural and religious backgrounds represented in the schools were not considered by the Principals, as their primary reason for selecting Living Waters Chaplaincy Service was that it was a known entity. With respect to the level of support, only two schools undertook parental surveys. In considering the need to open up the position through advertisement to

ensure a fair and equitable process, not one of the schools ever considered this. I could confidently conclude it was a ‘closed shop affair’. The process adopted by the schools was unfair and inequitable, and there was insufficient effort made to identify the true needs of the students. Although it was argued that the return rate of parental surveys was generally low, at least parents would have had an opportunity to express their support or non-support of the service. It is considered that surveys could have been extended to the students. DET’s response to the draft investigation report stated ‘Parents who are not council members are not entitled to vote at school council meetings refer Education (College and School Councils) Regulations so the conclusion drawn is questionable.’ This response by DET is quite concerning considering the limited powers of the school councils as is discussed in 12.6.3.

12.6.2 Content of the NSCP funding application

12.6.2.1 Claimed chaplaincy capacity

This section of the report has reviewed the claims made within the NSCP funding applications and shortfalls with respect to chaplains’ qualifications and training.

Capacity claims by the chaplains within the funding applications have been itemised in the tables below.

School	Chaplain/s nominated in <u>application</u>	Claimed chaplain capacity within <u>application</u>
Humpty Doo Primary School	Mr Stuart McMillan	<ul style="list-style-type: none"> • Peer skills workshops • Health curriculum development of values based curriculum • Seasons for growth • RAP¹⁴⁰-building resilience in young adolescents • RAP-parents-equipping parents • Real Justice Conferencing – conflict and dispute resolution • Boundary with kids and teens – for parents • Careforce Lifekeys-meaning and purpose of life (adults) • Advocacy for special needs students • Linking with other service providers • Support for ‘at risk’ students • Being a ‘listening ear’ for students, staff & parents • Provision of activities for students in a safe & caring environment • After-hour support to families, including marriage/relationship issues • Support school community in crisis – bereavement and grief • Participate in the well-being team and assist in links with indigenous parents.

¹⁴⁰ RAP – Resourceful Adolescent Program.

School	Chaplain/s nominated in application	Claimed chaplain capacity within application
Taminmin High School	Mr Stuart McMillan Ms Roslind (sic) McMillan	<ul style="list-style-type: none"> • Personal Development • Mental Health First Aid • Parenting workshops • Peer skills workshops • Body changes • Values based curriculum • Seasons for growth • RAP141-building resilience in young adolescents • RAP-parents-equipping parents • Careforce Lifekeys - meaning and purpose of life (adults) • Advocacy for special needs students • Linking with other service providers • Support for 'at risk' students • Being a 'listening ear' for students, staff & parents • After-hour support to families, including marriage/relationship issues • Support school community in crisis specifically – bereavement, links for crisis accommodation, student behavioural interventions & response to spirituality & faith enquiries • Participate in the well-being team, assist in links with indigenous parents and have ability to support camps, excursions, etc.
Bees Creek Primary School	Living Water Uniting Church Chaplaincy Services (no actual chaplain names listed)	<ul style="list-style-type: none"> • Personal Development • Parenting workshops • Peer skills workshops • Values based curriculum • Seasons for growth • RAP-building resilience in young adolescents • RAP-parents-equipping parents • Real Justice Conferencing – conflict and dispute resolution • Boundary with kids and teens – for parents • Advocacy for special needs students • Linking with other service providers • Support for 'at risk' students • Being a 'listening ear' for students, staff & parents • Provision of activities for students in a safe & caring environment • After-hour support to families, including marriage/relationship issues • Support school community in crisis specifically – bereavement, links for crisis accommodation and student behavioural interventions • Participate in the well-being team, assist in links with indigenous parents and have ability to support camps, excursions, etc.

School	Chaplain/s nominated in <u>application</u>	Claimed chaplain capacity within <u>application</u>
Girraween Primary School	Ms Roslyn McMillan	<ul style="list-style-type: none"> • Growth & Development programs • Involvement in Peer skills & Leadership training • Development & delivery in collaboration with staff of a values based curriculum • Kids club • Parenting workshops • Advocacy for special needs students • Linking with other service providers • Support for 'at risk' students • Being a 'listening ear' for students, staff & parents • Provision of activities for students in an environment of cooperation, care and respect • After-hours support to families • In time of crisis provide religious and personal advice, comfort and support, bereavement support and be a link for crisis accommodation and other appropriate agencies • Student behavioural intervention including Real Justice Conferencing, skills development, Seasons for Growth and Heart Masters • Participate in the well-being team • Support delivery of student welfare services • Provide guidance & respond to enquiries about spirituality, faith, values and ethical matter • Facilitate access to support services
Berry Springs Primary School	Ms Roslyn McMillan	<ul style="list-style-type: none"> • Personal Development • Parenting workshops • Peer skills workshops • Assistance with programs in resiliency and self esteem • Development with teachers of the values based curriculum • Seasons for growth • RAP-parents-equipping parents • Real Justice Conferencing – conflict and dispute resolution • Boundary with kids and teens – for parents • Careforce Lifekeys - meaning and purpose of life (adults) • Advocacy for special needs students • Linking with other service providers • Support for 'at risk' students • Being a 'listening ear' for students, staff & parents • Provision of activities for students in a safe & caring environment • After-hours support to families, including marriage/relationship issues • Support school community in crisis specifically – bereavement, links for crisis accommodation, student behavioural issues & response to spirituality & faith enquiries • Participate in the well-being team, assist in links with indigenous parents and have ability to support camps, excursions, etc.

Discussion of chaplains' capabilities with respect to funding agreements

In reviewing the accuracy of the funding applications and claims made in relation to chaplain capabilities each of the schools and nominated chaplains were considered.

In reading the funding application prepared by Ms FH the sole nominated chaplain was Mr Stuart McMillan. The words used within this funding application to describe capability were *'The chaplain is trained and can present the following programs for Humpty Doo Primary School community'*. The 'programs' listed in the funding application do not appear to be consistent with Mr Stuart McMillan's capabilities summarised above. Mr McMillan does not have the required training for the provision of Seasons for Growth and the Resourceful Adolescent Program. Further to this the application leads one to believe *Boundaries with Teens for Parents* is a program, as opposed to a book that is shared with parents.

The words used to describe chaplain capability within the other schools funding applications were quite different to that of Humpty Doo Primary School and of a more general nature. However each of the schools could be considered to have provided inaccurate information as discussed below.

In considering the funding application for Taminmin High School both Mr Stuart McMillan and Ms Roslyn McMillan were nominated as chaplains. In reviewing their combined capabilities against the claims made within the application Mr AC, Principal, included Seasons for Growth and the Resourceful Adolescent Program. As both chaplains did not meet the requirements which qualify them to deliver these programs the funding application was submitted inaccurately.

Berry Springs Primary School and Girraween Primary School nominated Ms Roslyn McMillan as the sole chaplain. In reviewing their funding applications each Principal stated the chaplain had the capability to deliver Seasons for Growth, Resourceful Adolescent Program and the Real Justice Conferencing. As Ms Roslyn McMillan does not meet the requirements for delivering these programs the funding application was submitted incorrectly.

Finally in considering Bees Creek Primary School, the Living Water Uniting Church Chaplaincy Services was nominated, as opposed to named chaplains, by Mr JT, Principal, and accepted by DEEWR. At the time of submitting the funding application neither Mr Stuart McMillan nor Ms Roslyn McMillan were qualified for the delivery of Seasons for Growth or the Resourceful Adolescent Program. At the time of commencement Mr Jason Purugganan did not meet the requirements for their delivery either. It can therefore be reasonably concluded that the application was incorrect.

Although it was recognised that Principals prepared their respective funding applications, there was reliance on the chaplains to provide information around their training and qualifications. When asked to comment on the information provided to DEEWR, Mr Stuart McMillan said that it was:

Too long ago ... Certainly the document would have... indicated some things that we had provided previously, some of the things that various members of the team were able to provide but... without seeing the document I couldn't say that this was included or that was included because I don't recall.

This process of the Principals making the applications when neither they nor the schools, nor DET are a party to the contract with DEEWR, nor the recipient of the funding is in my opinion poor public administration and should be reviewed by DEEWR.

Each of the areas listed within the funding application were individually read out to Mr Stuart McMillan by my Investigation Officer in which his responses were documented in section 12.4.2.3 *Group sessions*.

I consider the funding application information provided to DEEWR on chaplain capabilities to be partially incorrect. The chaplains had a responsibility to provide correct details to the Principals for inclusion in the funding application. However each of the Principals signing the funding application had a responsibility to ensure the information provided by the chaplains was correct. Each of the Principals said they had accepted the chaplains' claims either through a statement of qualifications, endorsement of the church or through further discussion with the chaplains. Mr AC, Principal Taminmin High School told my office that he thought he had viewed the Seasons for Growth qualifications however Mr Stuart McMillan does not possess the Certificate of Accreditation and Ms Roslyn McMillan's accreditation expired in 2006.

12.6.2.2 Northern Territory Ombudsman's jurisdictional restraints

I have been unable to explore a number of issues as the NSCP is a Commonwealth Government initiative administered by DEEWR over which I have no jurisdiction. However there are questions I will be asking the Commonwealth Ombudsman to consider.

The obligation of DEEWR in assessing the funding application would extend to verifying not only that the nominated chaplains possessed the claimed qualifications but also to assessing the quality of the claimed training programs. Were any of the courses or training programs attributed to the claimed chaplains' capacity nationally accredited programs or training provided by registered training organisations? Were they substantive courses or one day training sessions?

The five schools in question chose the chaplains because they had previously provided services in the area *'which Taminmin High School were very pleased with'*. There appears to have been no evaluation of the service provided previously.

There was a period of no more than three months between the release of the application form and guidelines and the closing date for application. The DEEWR guidelines requested information about School Community Consultation for the chaplaincy service. How did DEEWR assess the information provided?

At the end of specified funding periods acquittals and progress reports were required by DEEWR. The funding agreement did not specify who should prepare these only that they were to be provided by the funding recipient. The DEEWR progress report requires that *'This form must be completed by the school and certified by the Principal.'* How is the accuracy of the information in these documents verified by DEEWR?

The DEEWR progress report also requires the Principal to certify that:

- *funds have been used for the purpose for which they were provided, as outlined in the funding agreement and application;...*

The Principals are not a party to the funding agreement nor are they recipients or handlers of the funds, so how does DEEWR legitimately expect the Principals to provide the required

certification? Where only pastoral care has been provided how does a Principal or DEEWR assess that the funds were only used for pastoral care when there is no **practical** definition of 'pastoral care' or of 'chaplain'. The Principals were not provided with specific access to student records prepared and held by the chaplains, which further restricted assessment of certain services and their compliance.

A progress report prepared by one of the schools submitted the following:

- **Does the school community still support the service?**

Yes however a number have chosen to 'Opt out' of the program.

- **How has this support been determined?**

.....18 Families with a total of 30 children indicated that they wanted to participate in the program, and 22 families with 30 children were against the program being reinstated....

It should be noted that with new enrolments this term 4 more families 7 students – have 'opted in' to the program. 2 of the original respondents have left the school this term and thus the numbers as of now are 21 families for 'Opt in' involving 36 students and 21 families 'Opting out' involving 29 students.'

It is unclear what parameters DEEWR used to assess the information provided by the schools. Did DEEWR make any further enquiries or did they seek to rely on the written information provided in the progress report?

Did DEEWR make sufficient enquiries to establish the number of families that had left or were leaving the rural public schools because of the NSCP?

These are all matters that are unexplained.

The structure of the funding agreement between DEEWR and the service provider does not enable DET to monitor the services or their value, and the Northern Territory Ombudsman can not do so.

I will be asking the Commonwealth Ombudsman to enquire into how DEEWR administers the NSCP and evaluate the services the chaplains provide and the value for taxpayers' money spent on the NSCP with respect to Northern Territory schools the subject of this report. It will be for the Commonwealth Ombudsman to decide if he will investigate the operation of the NSCP in Australia to see if the same flaws in accountability, compliance with selection of service providers and the other issues of parental consent, management of information and chaplaincy services exceeding the boundaries and trespassing on counselling or psychology services exist elsewhere and are being managed appropriately by DEEWR.

I will also be asking the Commonwealth Ombudsman to review the investigation carried out by DEEWR in response to the complaints to the South Australian Office in late 2007 early 2008 by parents of students at the Northern Territory rural schools to see if it was robust and professional.

The NSCP Guidelines (16/02/2010 version) provide for monitoring by DEEWR. This includes conducting site visits to verify proper and efficient use of Program funds and that Program objectives have been achieved. I will ask the Commonwealth Ombudsman to enquire into the extent and effectiveness of any monitoring that has been undertaken.

12.6.2.3 Demographics

In considering the demographic information used by the rural schools in their funding applications, the following details provided by the Principals appeared to be consistent across the applications:

Area described	% adults earning less than \$500/week	% adults earning less than \$300/week	Social/community services located in the Shire	Residential dwellings
Litchfield Shire	49	32	Nil	Many of the students reside in dwellings that are rented and include tents, caravans and sheds. Large number of public housing flats which accommodate most disadvantaged in the community.

The funding applications do not make any reference to the source or year of the demographic data submitted. In reviewing the Australian Bureau of Statistics data available at the time, 2001, similar figures for the earnings per week can be reproduced. My concern is the funding application was prepared in 2007 and the value of \$500 per week in 2001 would have been considerably more than as at 2007. Also when excluding the wage earners aged 15-19 (not generally supporting a family) and 65 and over (generally retired) the percentages in the lower income estimates are reduced significantly. Furthermore the median weekly rent in the Northern Territory for 2001 was recorded as \$113, with the highest median rent recorded as \$167, which appears commensurate with the lower incomes stated. With these anomalies I consider this particular demographic information submitted in the funding application to be misleading as there was no reference to the source or year of the data.

With respect to references made in the funding application about the dwellings, the 2001 Census recorded only 13 dwellings as being public housing amongst over five thousand dwellings in the Litchfield Shire. I do not consider 13 dwellings to constitute a large number of public housing flats.

Types of dwellings recorded by the Australian Bureau of Statistics as per the 2001 Census did include *Caravan, cabin, houseboat* 867 dwellings and *Improvised home, tent, sleepers out* 149 dwellings. Once again however, the 2001 data would have been outdated at the time of the 2007 submission.

If it is correct that these figures and information were provided by the chaplains I cannot conclude that the School Principals deliberately misled the Commonwealth Department, however they do bear responsibility to ensure the accuracy of information they use and submit to any agency.

12.6.2.4 Business registration of Living Waters Chaplaincy Service

In reviewing each of the NSCP funding applications the following details the *Funding Recipient* under the title *Funding Agreement*.

School	Funding Recipient Details		
	Legal Name	Trading Name	ABN
Humpty Doo Primary School	Humpty Doo Primary School Council		
Bees Creek Primary School	Uniting Church in Australia Property Trust (NT)	<i>Living Waters Church Chaplaincy Services</i>	44834585067
Girraween Primary School	Uniting Church in Australia Property Trust (NT)	<i>Living Waters Church Chaplaincy Services</i>	44834585067
Berry Springs Primary School	Uniting Church in Australia Property Trust (NT)	<i>Living Waters Uniting Church Chaplaincy Services</i>	44834585067
Taminmin High School	Taminmin High School	Taminmin High School	

Enquiries were undertaken into the trading name of Living Waters (Uniting) Church Chaplaincy Services and its association with the Uniting Church in Australia Property Trust (NT). In conducting an ASIC search into the Uniting Church in Australia Property Trust (NT) the legal entity and ABN were confirmed correct. In viewing the recorded Trading Names on the ASIC site Living Waters (Uniting) Church Chaplaincy Services was not listed. A further ASIC search located the Living Water Chaplaincy Services as a registered business separate to the Property Trust (NT).

Enquiries with Business Affairs established the registers did not correctly reflect the link between the chaplaincy service and the Property Trust (NT) therefore requiring correction. My understanding is that this correction has since been made to the registers. However at the time of submitting the respective funding applications the three Principals who listed Living Waters within the funding recipient details failed to undertake a due diligence check which would have revealed that Living Waters was not a trading name of the Uniting Church in Australia Property Trust (NT).

12.6.3 Power of the school councils and Principals

The Principals and School Council Chairpersons endorsed the NSCP funding applications on behalf of the schools. Once the funding applications were submitted and approved by DEEWR a Funding Agreement was drafted and included signatories from the Commonwealth Government and the Funding Recipient, which was the Uniting Church in Australia Property Trust (NT). The Funding Agreement is considered to create obligations and responsibilities in relation to the respective schools although there is no DET signatory. To examine this situation and determine whether the School Council Chairpersons and Principals acted within their power and within delegated authority the following information was examined.

In considering the functions of the school council section 71C *Education Act* prescriptively outlines the following:

A school council may, in respect of the Government school for which it was established:

- a) ***examine the manner in which the educational policies of the Territory are to be implemented at that Government school and, to this end, to advise the head teacher accordingly;***

- b) **inquire into and identify** the particular educational needs of the community served by that Government school **and advise the Chief Executive Officer** of those needs;
- c) **consider and advise the head teacher and Chief Executive Officer** on initiatives in community education and, in particular, on means for improving links between that Government school, parent organizations, other associations and the community in general;
- d) **assess**, from time to time, the needs of that Government school in relation to buildings and facilities, equipment, and needs of students and teachers and other staff **and make recommendations to the Chief Executive Officer** with respect to the provision of those needs;
- e) **within the scope allowed by the functions and powers conferred** or imposed upon it, determine the purposes for which moneys allocated by the Agency to that Government school are to be expended and to **expend** those funds accordingly;
- f) **determine and regulate the conduct of activities** for the benefit of the local community served by that Government school **at any time when the school's buildings or grounds are not required for their usual purposes**;
- g) **exercise general control of the buildings and grounds of that Government school**, including, with the consent of the Chief Executive Officer, controlling the conduct of work being carried out to or in relation to those buildings or grounds, **upon such terms and conditions as are approved in writing by the Chief Executive Officer**;
- h) control the manner in which **prescribed services** are being rendered for that Government school;
- j) **advise the Chief Executive Officer** in relation to the job description for the position of head teacher;
- k) **advise the head teacher** in relation to the job description for teaching and ancillary staff;
- m) **employ**, with the consent of the Chief Executive Officer, such persons as the school council thinks fit, **upon such terms and conditions as is approved in writing by the Chief Executive Officer**;
- n) **carry out such activities as are approved by the Chief Executive Officer** for the purpose of raising funds to be expended on or in relation to the school and to expend such funds accordingly;
- p) **perform such other functions as the Minister, by instrument in writing, confers upon the school council.**

The Education Act further states in section 71D:

Powers of school councils and terms of reference

- (1) A school council has power to do such things as are necessary or convenient to be done **for, or in connection with, the performance of its functions.**

Although not specifically relevant, for the sake of completeness one should turn their head to section 71E. **Power to enter into agreements**, the *Education Act*, which stipulates:

...the Minister may, in determining under that section the terms of reference for a school council, determine that the school council shall not, except with the approval in writing of the Minister, enter into an agreement involving payment by that school council of an amount in excess of an amount specified in that determination by the Minister.

The functions of the school councils appear to be somewhat limited with respect to their decision making power and ability to legally bind a school or DET. In reviewing DET Contract Delegations, 1.1 *Execute (sign) a contract (Deed of Agreement)* it lists the various positions that have delegatory authority to execute a contract. The delegations do not list the School Principals nor the School Council Chairpersons as having authority to execute a contract. In seeking to define 'execute a contract' I am drawn to the *Contracts Act*. The definition contained within section 4 of the *Contracts Act* states:

In this Act, 'contract' means an agreement creating rights or liabilities whether made orally or in writing or whether it arises by implication from circumstances or from acts of parties and, without derogating from the generality of the foregoing definition, includes a sale, purchase, mortgage, lease, licence or other dealing with property, guarantee, indemnity or other agreement in relation to a loan and an agreement for the performance of works or services.

The actions of the School Principals and the School Council Chairpersons should be reviewed in accordance with this legal definition. On submission of the funding applications, signed by the School Principals and School Council Chairpersons, to the Commonwealth Department of Education, Science and Training¹⁴², Funding Agreements were generated¹⁴³. The Agreements were for the funding of chaplaincy services to be provided to the respective schools and were signed by a representative of the Commonwealth Department and a representative of the Uniting Church. No representative from DET was signatory to any of the actual Funding Agreements. I will discuss the issues associated with the Funding Agreements later in the report under Issue 6. For now I will continue to consider the power and actions of the School Principals and the School Council Chairpersons. It may be considered that as no representative from DET signed any of the actual Funding Agreements, the only DET signatory authority to create and execute the Agreement was provided by the School Principals and the School Council Chairpersons. In light of this it could be viewed that the actions of the School Principals and School Council Chairpersons gave rise to a signed Agreement creating rights and liabilities for the performance of services.

Mr Kevin Gillan was, at the time of the schools¹⁴⁴ submitting their funding applications and the NSCP commencing, the General Manager PARCS¹⁴⁵ and then Executive Director. When asked whether the funding applications had been quality checked by anyone at an Executive level Mr Gillan responded '*No it's not our responsibility because it's a direct agreement between the school and the Commonwealth government.*' I find this an interesting comment

¹⁴² Now named DEEWR.

¹⁴³ A Funding Agreement was generated for each of the schools that submitted a funding application, this includes all of the schools within the scope of this investigation.

¹⁴⁴ Berry Springs Primary School, Humpty Doo Primary School, Girraween Primary School, Bees Creek Primary School and Taminmin High School.

¹⁴⁵ Palmerston and Rural Cluster Schools, which includes the schools within the scope of this investigation.

given the schools do not have the delegatory authority to enter into such service agreements (contracts). Mr RP, who was at the end of 2007 the Director of Policy, Schools Operations and Strategy, confirmed that the Funding Agreements and contractual relationships with the service providers (Chaplains) were different to the usual process and said:

What I saw ... was a situation where it was quite a different funding agreement than other Commonwealth funding agreements. This was a funding agreement which was being paid directly to a provider, a service provider. It was actually ... a role of each Principal to ensure compliance with the guidelines and they worked from that side but it was still a funding direct to providers so that the Commonwealth Government had an agreement between the provider and the school themselves but as a department I felt we needed to look at our triangulation of that because normally those sorts of funds come through the department and then agreements are made about that and we then hand the funding direct to schools so its quite a different model obviously from previously seen. So I actually instigated some meetings with Legal Service...

The outcome was that they did commence ... looking at around policy as a department ... because it was a new program and it was, at that stage, hadn't even been formally implemented in the context of signed off agreements. So what I tried to do was to get that side of it in place and to look at the tri-part nature of it so we actually had sign off from our side along with the provider and the school and the Commonwealth. But because we weren't the funding provider we still... needed to have some policy around that and needed to have some triangulation and sign off. So that was one of the major things that I tried to move on. That didn't get finished in my time there, I was only there for a short time but that was the thing that I thought was quite paramount having dealt with that particular situation.

From Mr RP's comments I can reasonably assume that the usual procedure for these types of Funding Agreements requires a representative from DET (presumably with delegatory authority) to sign and execute a final Agreement. The signing of a Funding Agreement by a delegated authority within DET would then abrogate the signatures provided at a school level in the applications. In the case of the NSCP Funding Agreements there was no delegated authority from DET to abrogate the school signatures.

I consider each of the School Principals and School Council Chairpersons to have acted beyond their delegatory powers but do not believe it was a deliberate attempt to exceed their authority. This situation arose as a result of the funding application forms which state on the final page that the:

funding agreement will be established with a School, or a school community organisation, as a legal entity; or an education system (Catholic or State/Territory); or Project Sponsor¹⁴⁶

The School Principals were required to elect who the funding agreement would be established with and nominate the funding recipient. Each of the schools provided the

¹⁴⁶ <http://nscp.dest.gov.au/demo/FundingAgreement.html>

following details in their application:

School	Funding Agreement will be established with:	Nominated funding recipient
Berry Springs Primary School	Project sponsor	Uniting Church in Australia Property Trust (NT)
Humpty Doo Primary School	School, or a school community organisation, as a legal entity	Humpty Doo Primary School Council
Girraween Primary School	School, or a school community organisation, as a legal entity	Uniting Church in Australia Property Trust (NT)
Bees Creek Primary School	School, or a school community organisation, as a legal entity	Uniting Church in Australia Property Trust (NT)
Taminmin High School	School, or a school community organisation, as a legal entity	Taminmin High School

Section 2.3 of the NSCP Guidelines considers the funding arrangements and provides some clarity on the requirements placed on the School Principals and defines:

When the School Principal submits an application, he/she will be asked to nominate the organisation that will enter into a funding agreement to receive funding under the Programme. Under this Programme, the Australian Government will not make payments to schools without a funding agreement. The following organisations are eligible to enter into a funding agreement under this Programme.

• **School Registered Entity:**

- A Government School Community Organisation for a government school that has been approved by the Minister to receive funding under the Investing In Our Schools Programme.
- The legal entity for any Independent and Catholic school.

• **Supported by state and territory or systemic arrangements:**

- State and territory government education authorities which act on behalf of government schools.
- The legal entity for the systems in the non-government sector which support and act on behalf of non-government schools.

• **Project sponsor:**

- A project sponsor can be nominated by a school to manage the chaplaincy service on its behalf. For example, the project sponsor could be a chaplaincy service provider already approved by state or territory governments. The Department will enter into a funding agreement with the project sponsor as long as they are a legal entity, affiliated with or working with a religious institution to provide a school chaplain and deliver chaplaincy services in schools, or a state or territory government approved chaplaincy service.

Although the School Principals completed their applications collaboratively details differed as is demonstrated in the above table. This situation does highlight a flaw in the actual process for submitting such funding applications. Generally a funding application will lead to funds being allocated to the applicant to be spent with discretion in specified approved areas. However the NSCP application differed as it led to an Agreement for Service, which created an ongoing business/contractual relationship between parties for a specified time.

To have ensured consistency with other funding applications and appropriate delegated authority I believe the School Principals should have elected the funding agreement be with the education system ie. DET and listed them as the funding recipient. The department

would have then also acquired more appropriate control of the contractual arrangement that on the face of it binds the schools. The School Principals ultimately had a responsibility for ensuring they have the appropriate authority in such matters.

With the level of skill and experience School Principals bring to their position, I can only assume they would be familiar with what they are authorised to do. However in this matter as Mr RP led my office to believe it was the first of this kind, there would have been no precedent and given the School Principals are not solicitors I would not reasonably have expected them to have foreseen the legal implications arising from their actions of what they may have considered as simply submitting a funding application. It would appear, however, from the details provided within the applications no-one other than the School Principals, chaplains and possibly School Council Chairpersons were consulted with respect to the completion of the application form. This is quite concerning as it is something that could quite easily be remedied by having the correct policies and procedures in place.

It is pleasing to see that DET have since developed a policy on Chaplaincy Services in Schools¹⁴⁷ to address some of the issues contained within this report. The policy requires that chaplains enter into a Deed of Agreement with the Northern Territory Government. A review of the Deed identifies that the signatories section does include a delegated authority of the Northern Territory Government. Given the Commonwealth Funding Agreement does not provide for signatories from the three parties ie. Commonwealth, service provider and service recipients, the Deed is considered a step in the right direction attempting to create the tri-part relationship discussed by Mr RP during his interview with my office.

DET still, however, lacks a policy and guidelines on funding applications and funding agreements with respect to who can complete and sign the applications and who is to be named as the recipient on the resulting Agreement, if any.

The validity of the actual NSCP Funding Agreement should be reconsidered by DEEWR. At this point I am forced to make comment on the processes within the Commonwealth Department DEEWR which have permitted this situation to arise. The DEEWR process has created a situation that could be construed as a lack of privity of contract given there are three parties to the contract with only two of them being signatories. It is not clear why DET are not required to sign the Funding Agreement given the obligations and responsibilities arising. It is noted that Mr Chris Sheedy, State Manager South Australia, DEEWR, rejects the invalidity of the Funding Agreement, however I am yet to be convinced and will continue with my referral of this matter to the Commonwealth Ombudsman under our current Memorandum of Understanding, relating to the Northern Territory. I will also invite him to consider the administration of the NSCP across Australia.

12.6.4 Payment of funds

Following allegations of improper payments being made to the chaplaincy service by the schools the following information was considered. The NSCP Funding Agreements, for each of the schools within the scope of this investigation, are between the Commonwealth and the Uniting Church in Australia Property Trust. Schedule 2 clause 3.1 of the Funding Agreement states *We will provide you with the funding at the times and in the manner specified in item M of schedule 1.* Item M of schedule 1 identifies three interval payments, the first payment is on signing of the Agreement, the following two payments are subject to

¹⁴⁷ Effective Date August 2009.

tax invoices, progress reports and *acquittal*¹⁴⁸ of previous funds. Therefore in accordance with the Funding Agreement the Commonwealth would be making interval payments, subject to the set conditions, **directly to** the Uniting Church in Australia Property Trust. The payment of funds is therefore the responsibility of the Commonwealth and not the school councils or School Principals. In any event, as three of the five Funding Agreements¹⁴⁹ were signed by the Uniting Church in Australia Property Trust in 2007, this would have entitled them to an advance payment of \$60,000.

¹⁴⁸ Formal statement of income and expenditure in accordance with the Funding Agreement (clause 6.7 NSCP Guidelines)

¹⁴⁹ Berry Springs Primary School, Girraween Primary School and Bees Creek Primary School.

13.0 Conclusion

A common theme identified across the schools was a perceived need for additional resources. The Living Waters Chaplaincy Service presented itself through its chaplains as this much needed additional resource. With the introduction of the funding for school chaplaincy services through the Commonwealth Government the schools hastily prepared their funding applications with minimal time spent considering the required processes, policies and guidelines. It appeared there was an initial reliance on the actual NSCP Guidelines which also included the Code of Conduct for the chaplains, however the Guidelines were devoid of any practical level of detail. This level of detail was the responsibility of the schools, however keen to begin the chaplains were commenced before any time had been given to considering any details or implications. As a result written consent was not initially obtained from parents and services provided were not being adequately monitored. There was no one position that was responsible for overseeing the NSCP, which led to parental complaints not being adequately dealt with and inconsistencies across the schools. To compound the hasty implementation of the NSCP the schools were then faced with claims of a conflict of interest by the chaplains in addition to the provision of counselling services. Throughout this report several breaches by the chaplains were identified and in particular blatant defiance of DET Executive directives relating to the continued provision of services to a child during the defined suspension period.

In considering the types of chaplaincy services provided it was interesting to find that all of the five schools under the scope of this investigation, with the exception of the senior school at Taminmin High School, permitted the chaplains to provide one-on-one services when this was contrary to the position held by the DET Executive. As was established in reviewing the chaplain school diaries the nature of the one-on-one sessions was of a highly sensitive nature and quite concerning. The chaplains conducted these sessions for behavioural, emotional and other issues of students. The chaplains have also been privy to the confidential information about students discussed during the wellbeing team meetings even for those without parental consent.

The DET investigation undertaken by Mr Roger Newman concluded there were no breaches by the chaplains. In part this conclusion would have been formed due to a lack of information, reliance on unverified witness statements, time restraints and lack of robustness by the investigator. Some breaches identified by the schools through interviews conducted by this office that had occurred prior to the DET investigation were not found by Mr Roger Newman. This was not a deliberate attempt by DET to conceal information. It appeared to be a situation where Mr Roger Newman did not extend his collection of evidence beyond the statements obtained. It should be noted however that Mr Roger Newman would not have had the power to retrieve the chaplains' school diaries and other similar documentation, which would have provided him with pertinent information. If he had asked for them and they were not provided this should have raised questions about the accountability and candour of the chaplains that ought to have been brought to the attention of DET and DEEWR.

The most concerning finding of this investigation report was DEEWR's Funding Agreement which extends to three parties with only two being signatories. The fact that the Principals and School Council Chairpersons conduct may be constituted as giving effect to a contract (Funding Agreement) for which they did not possess delegated authority was also concerning. As the funding body I would have reasonably expected DEEWR to have

processes in place checking appropriate authority by the parties who apply for funds as well as those who receive and acquit them. It is unsatisfactory and risky practice that services are to be provided in Northern Territory schools to Northern Territory school students by a party to an agreement with the Commonwealth Government without the Northern Territory Education Department being a party to that agreement.

A handwritten signature in black ink, appearing to read 'C Richards', written in a cursive style.

CAROLYN RICHARDS
Ombudsman

November 2010