

Policy Number 2011:	Provision of Pastoral Services to a Person with a History of Inappropriate or Illegal Sexual Conduct	Reference
------------------------	--	-----------

The following areas of concern have driven the development of this policy...	
Care for the vulnerable	One of our important God given tasks is to care for and protect the powerless and vulnerable in our society (Isaiah 1:15-17 Deut 10:19-19; Matthew 25:31-46). Those who are abused by another person's sinful and often criminal behaviour must remain in the centre of all our thinking and actions. Our primary responsibility is to do everything in our power to keep such people safe. We need to find ways of continuing to care for perpetrators but our care for the vulnerable cannot be overshadowed or replaced by our care for perpetrators.
Constitution Requirements	<p>Lutheran Church of Australia Constitution and By-Law Objects include requirements to:</p> <ul style="list-style-type: none"> • Fulfill the mission of the Christian Church in the world by proclaiming the Word of God and administering the Sacraments in accordance with the Confession of the Church laid down in Article II; • Cultivate uniformity in worship, ecclesiastical practice and customs in accord with the principles laid down in Article X of the Formula of Concord; • Promote and maintain true Christian unity in the bond of peace; • Ensure that preaching, teaching, and practice in the Church are in conformity with the Confession of the Church; • Unite in one body for the more effective work of the church; • Promote and maintain unity in the bond of peace; • Minister to human need and provide institutions and agencies for this purpose; and • To take such action as is necessary for the protection of the congregations, pastors, teachers, and other church workers in the performance of their duties. <p>Authorities and Powers note that various LCA entities have authority and power to:</p> <ul style="list-style-type: none"> • Make rules and regulations for the administration of its affairs; and • That the jurisdiction of the District over the congregation includes the right to enlist its' wholehearted cooperation in the program approved by the Church or the District in the fulfillment of its Objects.
Legal	<p>All States require some form of working with children check or criminal record check for people undertaking a paid or volunteer role with children</p> <p>There are proposals for the harmonisation of these requirements across Australia.</p>

	<p>Current legislation</p> <p>ACT Children and Young People Act 2008</p> <p>NSW Children and Young Persons (Care and Protection) Act 1998</p> <p>NT Care and Protection of Children Act 2007</p> <p>QLD Child Protection Act 1999</p> <p>SA Children's Protection Act 1993</p> <p>Tas Children Young Persons and their Families Act 1997</p> <p>Vic Children, Youth and Families Act 2005</p> <p>WA Children and Community Services Act 2004</p> <p>All States have workplace health and safety laws which require that owners or operators of premises ensure the health safety and wellbeing of all persons on the premises.</p> <p>There are proposals for the harmonisation of these requirements across Australia.</p> <p>Current legislation.</p> <p>Commonwealth Occupational Health and Safety Act 1991</p> <p>ACT Work Safety Act 2008</p> <p>NSW Occupational Health and Safety Act 2000</p> <p>NT Workplace Health and Safety Act 2007</p> <p>QLD Workplace Health and Safety Act 1995</p> <p>SA Occupational Health Safety and Welfare Act 1986</p> <p>Tas Workplace Health and Safety Act 1995</p> <p>Vic Occupational Health and Safety Act 2004</p> <p>WA Occupational Safety and Health Act 1984</p>
Risk	<p>All completed Risk Analysis Matrix typically show that the likelihood of a sexual offender reoffending is 'Likely' or 'Almost Certain'; the impact of a re-offence occurring as being 'Critical'; and the overall risk is typically described as being 'Extreme'.</p> <p>Reoffending risk. Persons convicted of violent sexual offences or sexual offences involving children have a very high recidivist rate. ANSVAR have provided the following five instances they are aware of which involved Known Offenders re-committing, whereby the Insured (religious organisations) had no insurance cover :</p> <ol style="list-style-type: none"> 1. A Known Offender abused a young lad only days after being released from prison – supposedly with a clean bill of health from the Medical Profession who said he was reformed. 2. A Known Offender, although supposedly under supervision, abused two children within five minutes of the supervision not occurring/being relaxed – on paper this was a sound supervision program but where people are involved, it clearly wasn't infallible 3. A Known Offender sought to be reintroduced to a faith community and it was decided to graduate the return. Working Bees was the first step and although

	<p>there was a presence of quite a few adults, he severely abused a young girl.</p> <p>4. A Known Offender was closely supervised during worship, etc. in a faith community, but somehow gained the confidence of a family and abused two of the children in his own home. It could be asked where is the negligence of the Church? Even abuse occurring outside of faith activities can be an issue. In this particular case, it was alleged that the Church allowed this individual back into the community and used Faith activities to groom the family and gain their trust, using the Church as a conduit, who were aware of his history.</p> <p>5. A Known Offender sought to bring his son back into a small faith community- he continued to abuse up to five children</p> <p>Financial risk. The insurer advises that each new case would be judged on its own merits and circumstances. Where there is knowledge of a Known Offender, the courts may view the matter more harshly, and larger sums may be awarded because of this. Even where methods believed to be fail safe are implemented, they cannot always 100% reliable (eg constant supervision). The risk matrix typically describes the overall financial risk to the entity as 'extreme'.</p> <p>Reputational Risk. It is known that inappropriate sexual conduct in churches receives significant publicity and causes damage to the reputation of all churches and their members. The risk matrix typically describes the overall reputational or 'brand' risk as 'extreme'.</p> <p>Financial risk insurance. The insurance company policy is that it will not provide insurance cover for congregations where a known sex offender is worshipping. The highest amount handed down by a Supreme Court, (in Australia) is as follows: <i>A Supreme Court Judge awarded payment of \$750,000 to a victim of Sexual Abuse, consisting of \$500,000 Compensatory damages awarded against the Insured, and \$250,000 punitive damages awarded against the perpetrator (which was not covered by the insurance policy). What is significant here is that the Court found that the Insured did little to address "complaints" and irregular behavior's prior to the victim lodging a claim – hence the significance of the award.</i> The risk matrix typically describes the overall insurance risk as 'extreme'.</p> <p>Legal negligence risk. At the end of the day, the LCA's only defence may be that all possible steps were taken to diminish the opportunity of an offence being committed. However, the fact that the LCA had prior knowledge of the offender's history, would be difficult to argue, making it easy to assign legal liability or responsibility or a duty of care to the LCA. The risk matrix typically describes the overall legal risk as 'extreme'.</p> <p>Should the worst case scenario occur, the LCA could not only be faced with a large financial payout (not covered by insurance), but also to unwanted media attention and damage to reputation.</p>
<p>Business</p>	<p>The LCA and its agencies are accountable to ensure that all services meet regulatory requirements and operate sustainably in meeting the ecclesiastical</p>

	<p>mandate for service provision.</p> <p>Financial costs that may occur as a result of legal costs as well as judgments in the event of an incident may mean that a LCA entity could no longer operate in a financially sustainable way.</p>
Other	<p>Safe Place Policy. The term <i>A Safe Place</i> reflects the Church's aspiration that we should be a safe place for all, where the grace of God is active, enabling wrongs to be confronted and healing brought to hurting people.</p> <p>This LCA Safe Place policy covers complaints about sexual abuse or sexual harassment made against people acting on behalf of the church in any role.</p> <p>This means that all members of the Lutheran Church of Australia should be aware of the Safe Place Policy. Congregations therefore are required to alert their members to the policy at least once a year (Awareness Training). In addition, all employees, volunteers and committee members, are required to complete Level 2 training and then refresher training (Level 3) at least every three years.</p> <p>Child Safe Policy. The Child Safe Safety Management System is designed to promote the physical, emotional, psychological and spiritual wellbeing of young people, their families and caregivers.</p> <p>Child Safe is a safety and risk management system for people working with children and young people, incorporating a safety manual, policies and an online procedure system.</p> <p>Child Safe is relevant to anyone within the Lutheran Church of Australia who engages in work with children, young people and families. It is essential that we care for the children and young people we encounter. We analyse situations and prepare so that people experience the best we can offer. To not prepare is not to care.</p> <p>It is a requirement that all who are involved in ministry to children and young people complete Child Safe training.</p> <p>Destruction of Congregations. It is known that when incidents of a sexual nature occur within a congregation, there is often a dissipation of members due to loss of trust and unity in purpose.</p>

Policy

It is LCA policy that ... ***Any person with a known history of inappropriate or illegal sexual conduct will be excluded from participation in the worship life of the church until such time as a suitable risk management plan has been approved by an officer appointed by the LCA.***

Execution

This policy to be executed by:

- LCA General Church Council for governance
- All District Entities
- All entities on the Roll of Congregations, Parishes, and Worship Centre or Preaching Places
- All Ministry Services agencies

Note: The Roll of Congregations includes separately incorporated and non-incorporated bodies.

Work Instruction: The following work instructions are applicable to the implementation of this policy:

WI2100:01 Guidelines for Response to Known Sex Offenders

WI2100:02 Frequently Asked Questions –Known Sex Offender Policy

Reviewed by: This policy is to be reviewed by: GCC LCA

Review date: This policy is to be reviewed: *June 2011*

Signed by:

Date:

Version Control			
Number	Written by	Reviewed by	Comment
0.1	M Turner	J O'Keefe, L Crawford, K Stiller, M Bartch, G Tscharke	1 st Draft.
0.2	M Turner	J O'Keefe, L Crawford, K Stiller, M Bartch, G Tscharke	Care for vulnerable paragraph inserted. 2 nd Draft for Submission to GCC via EOC Completed 23 Feb 2011