



## Queensland legislative changes & vulnerable persons

In addition to the recordkeeping obligations established by the [Public Records Act 2002](#), public authorities need to be aware of other legislative requirements for making and keeping records in the context of interactions with vulnerable persons.

The legislative obligations outlined below summarise some recent legislative changes, some of which have been introduced in response to recommendations from the RCIRCSA by the Department of Justice and Attorney-General. The legislative obligations below emphasise the importance of good recordkeeping and keeping complete and reliable records to provide evidence that public authorities have taken all reasonable steps to ensure the proactive protection of vulnerable persons.

This summary has been developed as an overview only and is not intended to provide formal legal advice.

### Civil Liability and Other Legislation Amendment Act 2019 (CLOLA)

Upon commencement of the CLOLA, the [Civil Liability Act 2003](#) was amended to impose new statutory obligations on institutions (including public authorities) to take all reasonable steps to prevent abuse of children under their control, supervision, control or authority by persons associated with the institution.

The amendments impose a 'reverse-onus' on institutions. An institution is taken to have breached the duty if abuse occurs, unless the institution is able to provide it took all reasonable steps to prevent the abuse. The making and keeping of complete and reliable records will be critical to be able to demonstrate that a public authority took all reasonable steps to prevent abuse.

Other key changes include:

- extending the definition of abuse to include serious physical and psychological abuse, as well as sexual abuse
- removing limitation periods for survivors to commence a civil action against an institution.

### Limitation of Actions (Child Sexual Abuse) and Other Legislation Amendment Act 2016

In 2017, limitation periods for commencing an action for civil damages in relation to child sexual abuse in the [Limitation of Actions Act 1974](#) were removed to enable people who have experienced child sexual abuse to bring actions for personal injury damages despite the length of time that may have passed since the abuse occurred. This amendment also applies to a notice of claim made under the [Personal Injuries Proceedings Act 2002](#) (section 9) and to an action for damages arising under relevant sections of the [Civil Proceedings Act 2011](#).

## Human Rights Act 2019

Recordkeeping considerations are a key aspect of the *Human Rights Act 2019*. As covered in the *Guideline on creating and keeping records for the proactive protection of vulnerable persons*, individuals have the right to expect that a public authority adequately and sufficiently documents the interactions they have. As identified in the Guideline, this does not mean that a record needs to be created for every interaction a public authority has with a vulnerable person. Under the *Human Rights Act 2019*, it is unlawful for a public authority:

- a) to act or make a decision in a way that is not compatible with human rights, or
- b) in making a decision, to fail to give proper consideration to a human right relevant to the decision.<sup>1</sup>

In this context, it is essential that public authorities consider which records might be needed in case an allegation of abuse is made in the future. Public authorities need to consider which records may be relevant, based on the type and level of interaction they have with vulnerable persons.

## Other statutory obligations

Each public authority will likely have their own unique legislative and statutory obligations in relation to ensuring all reasonable care is taken for the safety and wellbeing of people in their care and those they interact with. For example, the education sector has common law responsibilities to ensure all reasonable care is taken for a student's safety and statutory safety duties to eliminate or minimise risk so far as is reasonably practical.

The *Guideline on creating and keeping records for the proactive protection of vulnerable persons*, is not intended to replace these existing obligations, but is designed to complement them and provide supporting advice from the recordkeeping perspective.

## Further information regarding legislative change in Queensland

Queensland Legislation

Queensland Human Rights Commission

Royal Commission into Institutional Responses to Child Sexual Abuse

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<sup>1</sup> s.58(1) *Human Rights Act 2019*, <https://www.legislation.qld.gov.au/view/whole/html/inforce/current/act-2019-005>