

GUIDELINE ON CREATING AND KEEPING RECORDS FOR THE PROACTIVE PROTECTION OF VULNERABLE PERSONS

Queensland State Archives

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Foreword

Mr Robert (Bob) Atkinson AO APM



It is my privilege to provide this foreword for the Queensland State Archives' *Guideline on Creating and Keeping Records for the Proactive Protection of Vulnerable Persons*.

Throughout the Royal Commission into Institutional Response to Child Sexual Abuse (the Royal Commission), I heard first hand from many people with lived experience of institutional child sexual abuse about the associated impact recordkeeping had on their lives.

The past recordkeeping practices of many organisations failed the children in their care. For many institutions, records did not exist, were incomplete or were inaccurate and insensitive. Some records were deliberately destroyed or otherwise withheld from authorities.

It was common for an institution to approach recordkeeping from its own perspective, often to protect its reputation, its finances and its personnel.

We found during the Royal Commission that the impact of poor recordkeeping can add to the trauma associated with childhood abuse. We heard of the distress and frustration experienced when people received files about them that contained limited, inaccurate and inappropriate information.

There is no doubt recordkeeping has greatly improved over the years. Contemporary organisations accept that recordkeeping is an important element of institutional leadership and culture as well as transparent and accountable governance.

Importantly, full, accurate and sensitive records have the potential to support people with lived experience and alleviate the lifelong impact of child sexual abuse.

I am grateful to the Queensland State Archives for producing this practical guide to assist Queensland public agencies in their recordkeeping responsibilities.

Queensland State Archives should be commended for placing the protection of children and vulnerable people at the core of its guidelines, and for raising the responsibilities of institutions to identify the risk of all forms abuse and respond appropriately when it does occur.

My sincere thanks to all Queensland public agencies who will use this resource in the work you do.

Introduction

Poor recordkeeping impacts vulnerable persons

The Royal Commission into Institutional Responses to Child Sexual Abuse (RCIRCSA) recognised:

- appropriate recordkeeping forms an important part of a public authority's strategy to contribute to the proactive protection of children within our community
- inadequate records and recordkeeping practices contribute to delays and failures to identify and respond to risks and incidents of child sexual abuse.

In the context of the proactive protection of vulnerable persons, the creation of complete and reliable records is vital to:

- identify risks of abuse and respond appropriately
- protect the rights and entitlements of victims and survivors of abuse.

The RCIRCSA provided several standards to create child safe institutions. These can also apply in the broader context of proactive protection of vulnerable persons and generally highlight the need for a shared responsibility across a public authority. Considerations include:

- proactive protection of vulnerable persons is embedded in public authority leadership, governance and culture
- physical and online environments minimise the opportunity of abuse to occur
- policies and procedures document how the public authority manages the safety and wellbeing of vulnerable persons.

Relationship to existing recordkeeping requirements

The advice outlined in this Guideline should be considered as an extension of your existing recordkeeping responsibilities under the *Public Records Act 2002* – not a new set of requirements that your public authority is responsible for adhering to.

The advice in this Guideline is specific to recordkeeping considerations for the proactive protection of vulnerable persons but could equally be applied to other business as usual activities carried out by your public authority. For example:

- Your public authority will likely already have a risk management framework in place. This Guideline puts that risk framework into the context of interactions with vulnerable persons, and an assessment of the processes and recordkeeping considerations related to these interactions.
- Under the *Public Records Act 2002*, your public authority is responsible for ensuring digital records (e.g. records in business systems, CCTV etc.) remain able to be produced or made accessible for as long as they are required to be retained. Some of these digital records may already need to be retained for up to 120 years or even permanently. In the context of this Guideline, this may mean that certain digital records may need to be retained either on a long-term temporary basis (i.e. 100 years) or potentially permanently.
- Most public authorities will already have processes in place for managing claims or investigations of abuse (whether physical, sexual or otherwise). This Guideline places this process within the context of interactions with vulnerable persons.

- Many public authorities will deal with third-party service providers for various business functions. This Guideline recommends that you consider how records of interactions with vulnerable persons should be identified and incorporated into these arrangements.

Separate to these specific recordkeeping requirements, it is important to note that records cannot be divorced from business processes and activities. Records are an element within a business process, not a standalone activity which happens in isolation. Recordkeeping is an organisational responsibility with the executive officer ultimately responsible under the *Public Records Act 2002*.

Good recordkeeping ensures **all areas within a public authority**, not just those with responsibility for records management, create cultures, adopt strategies and take action to prevent harm to vulnerable persons.

Relationship to other legislative requirements

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. These include, but are not limited to:

- *Civil Liability and Other Legislation Amendment Act 2019 (CLOLA)*
- *Limitation of Actions (Child Sexual Abuse) and Other Legislation Amendment Act 2016*
- *Human Rights Act 2019*.

Further to these requirements, 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 persons in their care and those they interact with. This Guideline is not intended to replace these existing obligations but is designed to complement them and provide supporting advice from a recordkeeping perspective.

Purpose

The purpose of this Guideline is to:

- contribute to the proactive protection of vulnerable persons
- support disposal authorisations granted under the General Retention and Disposal Schedule (GRDS) described as, *proactive protection of vulnerable persons – relevant records*
- guide public authorities in the identification of records that may provide corroborating evidence of contact with vulnerable persons in support of an incident, allegation, disclosure and investigation of abuse
- accept recommendations 8.1 (and provide a practical response for recommendations 8.2 to 8.4) from the [Final Report, Volume 8: Recordkeeping and Information Sharing](#) of the RCIRCSA
- provide coverage for relevant records relating to the terms of reference for the *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* and the *Royal Commission into Aged Care Quality and Safety*
- provide guidance that assists public authorities implement broader whole-of-government initiatives related to the protection of vulnerable persons.

Definitions

The Department of Social Service defines vulnerable persons as:

Vulnerable Persons:

- a) a Child or Children; or
- b) an individual aged 18 years and above who is or may be unable to take care of themselves or is unable to protect themselves against harm or exploitation by reason of age, illness, trauma or disability, or any other reason.¹

Abuse

There are multiple forms of abuse including, but not limited to, child sexual abuse, sexual abuse, physical abuse, psychological abuse perpetrated in connection with sexual abuse or serious physical abuse, emotional abuse, elder abuse, financial abuse. Public authorities must refer to the appropriate entity for relevant definitions. For example:

Child sexual abuse – an appropriate definition may be sourced from:

- the *RCIRCSA*²
- *Civil Liability and Other Legislation Amendment Act 2019 (CLOLA)*

People with disability – an appropriate definition may be sourced from the *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability*³.

Elder abuse – an appropriate definition may be sourced from the *World Health Organization, The Toronto Declaration on the Global Prevention of Elder Abuse*.⁴

Scope and related documents

This guideline is aimed at **all** Queensland public authorities. It includes:

- departments, local governments, statutory authorities and bodies, universities, Ministers, Assistant Ministers, courts and Government Owned Corporations
- entities that provide services to vulnerable persons as a core function and public authorities that deliver services to a client base that includes vulnerable persons
- entities that provide, or have at any time provided, activities, facilities, programs or services of any kind that provide the means through which staff have contact with vulnerable persons
- paid staff, volunteers, visitors, contractors and outsourcing arrangements.

This guideline accompanies the statutory disposal authorisations approved by the State Archivist in the GRDS 1558, 1559 and 1560 and should be read in conjunction with the [Records Governance Policy](#).

¹ Adapted from Australian Government Department of Social Services <https://www.dss.gov.au/about-the-department/doing-business-with-dss/vulnerable-persons-police-checks-and-criminal-offences>.

² <https://www.childabuseroyalcommission.gov.au>

³ <https://disability.royalcommission.gov.au>

⁴ https://www.who.int/ageing/projects/elder_abuse/alc_toronto_declaration_en.pdf

Authority

This Guideline is issued by the State Archivist under s.25 (1) (f) of the *Public Records Act 2002*.

Relevant records – vulnerable persons

Disposal authorisations – an overview

Disposal authorisations relating to the *Proactive protection of vulnerable persons – relevant records* have been approved by the State Archivist in the GRDS.

Disposal authorisation	Retention period unpacked
1558 Incidents and allegations of abuse – vulnerable persons	<ul style="list-style-type: none"> • Retain 100 years after creation of record • Includes: <ul style="list-style-type: none"> ○ Allegations of abuse ○ Disclosure of abuse ○ Incidents of abuse ○ Investigations of abuse
1559 Evidence of interactions and contact with vulnerable persons	<ul style="list-style-type: none"> • Retain until 31 December 2028 <p>QSA will undertake a reassessment of this retention period prior to 31 December 2028</p>
1560 Governance practices	<p>Permanent</p> <ul style="list-style-type: none"> • Transfer the records to QSA when they become inactive

Additional information on the retention periods relating to disposal authorisations 1558, 1559 and 1560, including relevance to RCIRCSA, changes to the *Limitation of Actions Act 1974* and the National Redress Scheme (NRS), refer to the [GRDS appraisal log](#).

Special note:

The National Redress Scheme (NRS) was enacted in response to the RCIRCSA. The Scheme provides support to people who experienced institutional child sexual abuse and will run for 10 years from 1 July 2018. When responding to RCIRCSA, the Queensland Government considered the NRS to be critical for acknowledgement of the horrific experiences of child sexual abuse that people experienced in institutions that were supposed to care for and protect them.

Records covered by the above disposal authorisation **do not** include records of applications made to the NRS. A separate appraisal of records generated during the operation of the redress scheme will be undertaken in the future. For further information on the National Redress Scheme and how it relates to RCIRCSA see www.nationalredress.gov.au/.

Creating and managing complete and reliable records

A public authority must create complete and reliable records to comply with the *Public Records Act 2002*. This includes when a record is created or received in relation to an interaction with a vulnerable person and when it is created or received as part of a business process.

All public authorities must have established policies and processes which support the making of complete and reliable records. Public authorities must ensure service providers and volunteers are aware of recordkeeping responsibilities. For further information refer to the [Records Governance Policy](#) and recommendation 8.4 of the RCIRCSA: [Records and recordkeeping principles](#)

Incidents, allegations and disclosures of abuse – vulnerable persons

A reliable and accurate record in relation to an incident, allegation or disclosure of abuse will likely include:

- details about the incident, allegation or disclosure including names of those involved, witnesses, locations, times and dates etc
- details of conversations and follow up actions
- contextual information so the record's value as evidence remains relevant over time. For example, who created the record, when was it created, file reference numbers or parts of files to show linkages to other documents
- reference to other supporting documents so their relevance to the incident, allegation or disclosure is not lost.

Records relating to vulnerable persons may contain sensitive information. Public authorities should ensure that appropriate steps are taken to ensure these records are stored in a secure manner. The *Information security policy (IS18:2018)*⁵ establishes the policy requirements related to the implementation of information security to maintain the confidentiality, integrity and availability of information.

How to identify relevant records for the proactive protection of vulnerable persons

Public records provide corroborating evidence of interactions and contact with vulnerable persons which may be relevant to future allegations and/or investigations of abuse. Public authorities should be aware that records that relate to general operations (and not specifically services delivered to vulnerable persons) may become relevant to an actual or alleged incident of abuse.

To protect a person's legal rights and entitlements, public authorities have a responsibility to maintain records which may provide corroborating evidence for any incidents, allegations, disclosures and investigations relevant to the proactive protection of vulnerable persons. Each public authority is likely to have different records that may be relevant to a current or future abuse incident or allegation. This will likely depend on the type of services provided to, and the nature and extent of interaction with vulnerable persons.

A risk analysis can assist in identifying records which may be regarded as corroborating evidence.

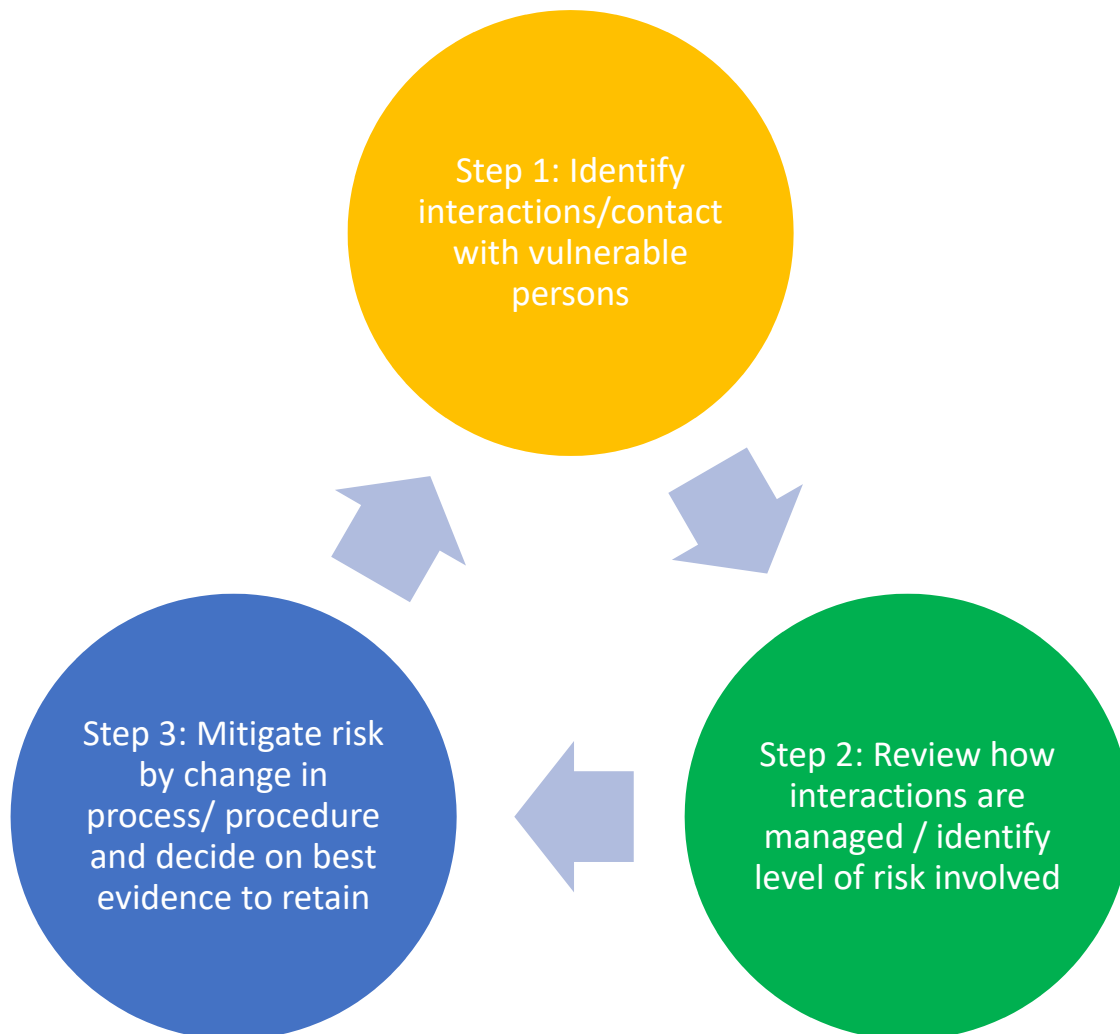
⁵ Information security policy (IS18:2018) <https://www.qgcio.qld.gov.au/documents/information-security-policy>

This Guideline does NOT require your public authority to keep records of every interaction with vulnerable persons.

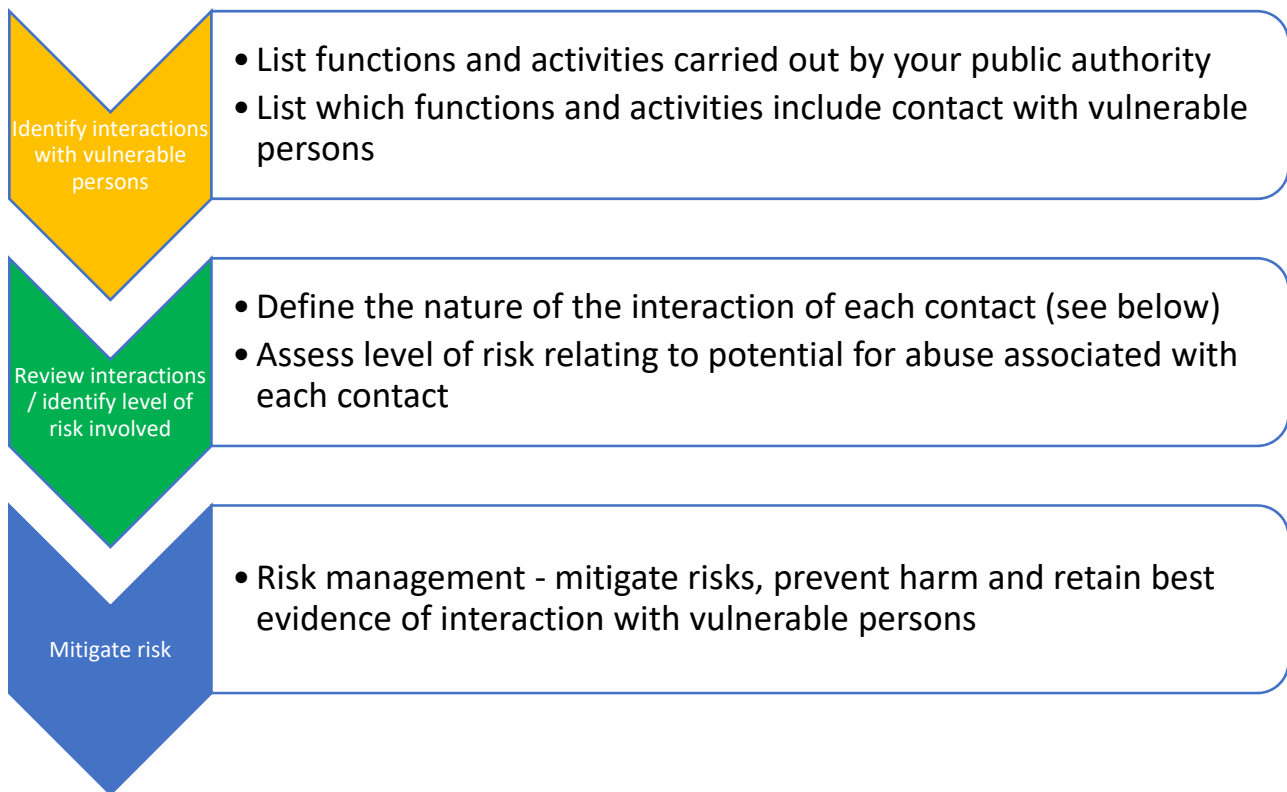
Public authorities need to consider which records might be needed in case an allegation of abuse is made in the future. Public authorities need to consider which records may be relevant, based on the type and level of interaction they have with vulnerable persons.

Use the workflow and advice below to identify interactions, identify risk and manage interactions for the proactive protection of vulnerable persons.

Risk analysis workflow – Proactive protection of vulnerable persons



Unpacking the workflow



Public authorities must carefully assess how their business interacts with vulnerable persons. This includes public authorities that infrequently interact with vulnerable persons (e.g. apprentices building or maintaining roads). In this situation consider embedding strong governance practices and raising staff awareness of general responsibilities for infrequent interactions with vulnerable people.

Example

The main function of a water authority may revolve around water supply, drainage, sewerage, salinity mitigation services etc but they may also occasionally conduct tours of their facilities. These may include vulnerable persons e.g. school groups or senior citizens groups. In this instance the water authority will need to consider the nature of the interaction and any risk of abuse occurring.

Nature of interactions and evaluation of risk – contact or interactions with vulnerable persons

Not all public authorities have the same level of risk that an incident or allegation of abuse could occur. To implement this guideline, it is critical to analyse identified interactions between a public authority and vulnerable persons and **assess if the nature of the interaction carries a level of risk to the vulnerable person.**

Risk management within the context of interactions with vulnerable persons

When analysing the risk associated with any interactions your public authority may have with vulnerable persons, it is important to remember that risk should be considered within the context of the vulnerable person. This requires flipping the traditional risk lens to assess the risk on behalf of someone else – not necessarily just the risk to the public authority.

The flipping of the traditional risk lens is consistent with legislative changes being made to the *Civil Liability Act 2003*, which reverses the onus of proof to the public authority. Changes to legislation requires the institution to demonstrate that they took all reasonable steps to prevent abuse to a vulnerable person.

Each public authority will likely have their own risk management framework. Consider how these frameworks can be applied rather than developing a new framework for the context of interactions with vulnerable persons.

If your public authority does not have a risk management framework in place, there are a number of resources available that can assist. For example, the Queensland Treasury *Guide to Risk Management*⁶ provides an overview of the key concepts of risk management, and guidance on how the risk management process can be practically applied by any Queensland public authority. This advice is based on *AS/NZS ISO 31000:2009 Risk management – Principles and Guidelines*.

The examples developed below provide generic examples of the types of interactions a public authority may have with vulnerable persons. These examples are intended to be generic in nature. Individual scenarios within each public authority will likely differ and carry different levels of risk to a vulnerable person. The following examples highlight the **potential** of abuse occurring. Use the risk management framework in place within your public authority to identify risks associated with interactions that are specific to your circumstances.

Examples



Interaction: online homework help session

Nature of the interaction: one to many

Setting: public forum with the whole class, teacher and teacher's assistant

Risk: incident of abuse occurring in that setting is unlikely

Action: manage records as per business as usual



Interaction: counselling session

Nature of the interaction: one on one

Setting: private setting away from scrutiny

Risk: incident of abuse occurring in that setting is possible

Action: refer to Mitigate risk and decide on best evidence

⁶ A Guide to Risk Management, <https://www.treasury.qld.gov.au/resource/guide-risk-management/>



Interaction: social inclusion program at council community centre

Nature of the Interaction: many to many

Setting: public area of community centre with multiple support staff/facilitators

Risk: incident of abuse occurring in that setting is unlikely

Action: manage records as per business as usual



Interaction: personal care program - assistance with showering and dressing

Nature of the interaction: one on one

Setting: private setting away from scrutiny

Risk: incident of abuse occurring in that setting is possible

Action: refer to [Mitigate risk and decide on best evidence](#)



Interaction: tour of new departmental exhibit by aged care facility residents

Nature of the interaction: one to many

Setting: combination of public areas and private settings

Risk: incident of abuse occurring in that setting is unlikely

Action: manage records as per business as usual



Interaction: apprentice working with supervisor

Nature of the interaction: one to one

Setting: combination of public areas and private settings

Risk: incident of abuse occurring in that setting is possible

Action: refer to [Mitigate risk and decide on best evidence](#)

Mitigate risk and decide on best evidence

To determine the best corroborating evidence of an interaction with vulnerable persons, the evidence will need to confirm the who, when and what (evidence of the event, participants and activities). The RCIRCSA recognised uncertainty exists for institutions regarding which records may provide evidence for, or be relevant to, a current or future allegation or disclosure of child sexual abuse. This also applies to records of interactions with vulnerable persons.

Evidence of an interaction may be a record provided for a different purpose. For example, a vehicle log book could already provide evidence of when a staff member was at work. In other situations, it may require the creation of a new record.

Mitigation and treatment strategies may be developed once risk priorities are agreed upon. This may include:

- redesigning business processes to reduce the risks of abuse occurring
- creation of records to document interactions with vulnerable persons
- a combination of the above two approaches.

There may be a range of mitigation strategies to treat each identified risk. Assess each strategy for its likely effectiveness.

Treatment options should be scaled to the level of risk posed and may include:

Treatment option	How it mitigates risk
Avoidance	This could include changing the scope, timeframe or any other actions which may alter the risk likelihood
Preventative / mitigation	Actions that reduce the possibility that the risk will occur such as changing practices and processes
Contingency actions	Planned actions that can better manage public authority interaction with vulnerable persons, including creation and retention of public records that document public authority interaction with vulnerable persons

To ensure risks are appropriately monitored, managed and treated, ownership must be allocated appropriately. The proactive protection of vulnerable persons is a shared responsibility across a public authority. It is important risks associated with interactions with vulnerable persons are considered as part of a public authority's wider strategic planning agenda (e.g. with senior leadership, including representatives from legal, audit, business owners etc.).

Risks should be regularly reviewed and monitored to ensure that the treatment actions have been completed, to evaluate the effectiveness of treatments, to manage any new risks and to identify any additional treatment actions.

Proactive protection of vulnerable persons

Decisions around the creation and management of evidence of the contact and interaction with vulnerable persons should be documented and form part of a public authority's governance process.

Suggestions for the proactive protection of vulnerable persons include:

- use the results from the workflow to assess the interactions and level of risk
- consider how changes in business processes will be triggered and/or documented to mitigate risk
- use the public authority's risk register as an annual health check
- document any periodical business process reviews to identify new areas of potential risk
- delivery of annual training sessions for employees on the importance of creating and keeping complete and reliable records.

Further information and resources

- Council of Australasian Archives and Records Authorities Royal Commission Working Group [Guidance for identifying and retaining records which may become relevant to an actual or alleged incident of child sexual abuse](#)
- Royal Commission into Institutional Responses to Child Sexual Abuse - [Final Report](#)
- Royal Commission into Aged Care Quality and Safety – [Terms of Reference](#)
- Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability – [Terms of Reference](#)
- [Records Governance Policy](#)
- [General retention and disposal schedule \(GRDS\)](#)
- [Queensland Government Response to the Royal Commission into Institutional Responses to Child Sexual Abuse.](#)