

Invitation to comment

A Functional Disposal Authority Concept for Health Sector Information

November 2019



New Zealand Government

About this consultation

Overview

Archives New Zealand (Archives) focus over the last year has been to develop a work programme ensuring that our regulatory approach is fit for purpose in an increasingly digital environment. In 2018 we shared some of our initial thinking of what this might look like through our on-line engagement about the Regulatory Programme. Findings from this engagement supported looking at a new approach for disposal authorisation.

This new approach to disposal authorisation shifts away from the agency specific¹ approach to a more holistic approach to appraisal and disposal which focuses on bringing together the business functions of Government by functions and/or sector. Currently, Archives is referring to this as a functional disposal authority (FDA).

We also want to transition from highly structured current disposal authorities to authorities that are structured around broader retention categories.

Our intention is to support public sector organisations to improve their information management capabilities and enable them to fulfil their legal obligations under the Public Records Act 2005 (PRA) and other Acts².

To test the new approach, Archives set up a working group with the District Health Boards, New Zealand Health Partnerships Limited³ and the Ministry of Health.

The working group has produced three draft functional disposal authorities (FDAs) attached to this document. This document also explains our thinking behind the concept of a functional disposal authority.

As part of the process of developing this approach, we are initiating consultation with wider external stakeholders. This is intended to act as a final check and refinement of our appraisal thinking and recommendations.

Requirements for legal disposal

Under the PRA, no person may dispose of, or authorise the disposal of, public records or protected local authority records without the Chief Archivist's authority.

Disposal authorities are the legal instruments, issued by the Chief Archivist, which provide the formal authorisation for the disposal of information and records in accordance with the provisions in section 18 of the PRA. They set minimum retention periods and give authority for consequent disposal actions for the information and records they describe.

¹ Disposal authorisation valid only to a specific public sector organisation

² Such as Privacy Act 1993, Official Information Act 1982, Health (Retention of Health Information) Regulations 1996

³ Subsidiary company to DHBs

How to comment

We would like to receive feedback on the three topics below:

- Functional Disposal Authority (FDA) as a new concept
- Disposal recommendations for health sector information
- Expression of interest in signing up to an FDA to get disposal coverage

Email your feedback on the consultation documents by close of business, 16 December 2019 to rkconsultation@dia.govt.nz

Please use the feedback form attached below as this will also help analysis of your feedback.

[FDA consultation feedback form](#) (PDF, 367 KB)

Next Steps

At the end of the consultation period, Archives will assess and analyse your comments. This analysis may be used to further refine the draft FDAs. Where there are significant changes suggested we may contact you to discuss your feedback.

Once we complete the analysis, the disposal authorities will be made available on Archives New Zealand's website for a period of 30 days for public notification, as required under section 20(2) of the PRA, prior to approval by the Chief Archivist.

Feedback is public information

Please note that any feedback you may submit becomes a public record. Members of the public can ask for copies of public information and records under the Official Information Act 1982 (OIA), which stipulates that information must be made available unless there is good reason for withholding it (OIA sections 8 and 9).

Please tell us if you think there are grounds to withhold specific information in your feedback, for example, if it contains information that is commercially sensitive or personal. However, be aware that any decision Archives makes to withhold information may be reviewed by the Ombudsman and overturned by the Ombudsman.

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Definitions

The following list defines common information and records management terms used in the documents provided for consultation.

Agency: A body, business, organisation or institution that creates or manages its own records in the course of its business or activities. This term is commonly used by Archives and public sector organisations.

Appraisal: The process of evaluating business activities. Includes analysis of business context, business activities and risk to enable decision making on what records to create and capture, and how to ensure the appropriate management of records over time.

Class (Disposal class): A group of records performing or recording similar activities and therefore having the same retention period and disposal action.

Class Description: The description of records which have been grouped together in functional and/or retention period groups/classes.

Disposal: A range of processes associated with implementing records retention, destruction or transfer decisions which are documented in disposal authorities or other instruments. In relation to a public record or local authority record, this means—

- (a) the transfer of control of a record; or
- (b) the sale, alteration, destruction, or discharge of a record.

Disposal Authority: Instrument which defines the disposal actions that are authorised for specified records.

Disposal Schedule: A systematic list of groups of records which defines minimum retention periods with triggers and disposal actions.

Functional Disposal Authority: Instrument which defines the disposal actions that are authorised for specified records based on the functions and activities of government.

General Disposal Authority: Instrument issued by the Chief Archivist that defines the disposal actions for records common to all public sector organisations for e.g. human resources and financial records.

Public Office: The legislative, executive and judicial branches of the Government of New Zealand and their agencies or instruments, including departments, offices of Parliament, state enterprises, Crown entities, the Police, the Defence Force, and the Security Intelligence Service. Crown entities including district health boards, school boards of trustees and tertiary education institutions. (PRA, s4)

Public record: Information and records created or received by a public office in the conduct of its affairs, which includes the records of any matter that is contracted out to an independent contractor. This definition also covers records declared to be public records by the Governor-General and estray records. (PRA, s4 and s17(1))

Retention period: The minimum length of time after the disposal trigger that a record must be maintained and accessible. At the end of the retention period, a record may be subject to a disposal action.

Trigger: The point at which the minimum retention period starts. A trigger may be a date or an event (e.g. last date of entry, date of project closure). A disposal action may be applied after the retention period has finished.

Consultation Part 1: A functional disposal authority concept

Functional Disposal Authorities (FDAs), are focussed on the functions and activities of Government rather than the administrative structures. The intention of FDAs is to cover information and records that may be created and/or received in the performance of high level functions carried out by and/or common to more than one agency in a sector, but not necessarily to all-of-government. This concept will allow disposal coverage to be constructed by selecting one or multiple FDAs. If necessary, agencies will develop an agency- specific disposal authority for any functions that are unique to that agency.

A disposal authority of high-level functions is a concept that has not been fully tested by Archives New Zealand as yet, although we have explored and researched the idea at different times in the past. However, now is the right time to test our thinking in practice. We want to work with agencies to improve their information management and enable them to fulfil their legal obligations under the PRA as well as ensure that our regulatory approach is fit for purpose in an increasingly digital environment.

To assist us in developing this concept, Archives decided to test the feasibility of creating FDAs as well as supporting systems for approvals by the Chief Archivist and agencies signing up to FDAs. Consequently, we initiated a pilot project with the DHBs and other health sector organisations. The DHBs already had a sector disposal authority and its scheduled review was an opportunity for testing.

Comparisons

Current Disposal Authority	Proposed Functional Disposal Authority
Agency specific Disposal Authority (DA) The authority is not transferable to another agency during administrative change e.g. when functions are passed to another agency. This often results in time-consuming amendments to the authorities, or creation of a new disposal authority to cover the records transferred from another agency.	Functional Disposal Authority The authority is driven by the high-level business functions of government, which are likely to endure across structural and institutional changes. The intent is to improve efficiency for agencies and Archives by creating a more streamlined and sustainable process. It will be more flexible during administrative change as it can be used across multiple agencies.
Set expiry and review dates Authorities expire and agencies are required to renew the authorities every 10 years.	Continuing authority with review Authorities will not expire but continue with regular reviews by Archives and agencies. This will also allow amendments to be made where government functions change over time.

Potential Benefits

- Efficiencies for agencies and Archives as a result of a more streamlined and sustainable disposal authorisation process, and expanding and reusing disposal coverage
- Reduction of duplication and inconsistencies in robust disposal decisions and increased disposal coverage across government

- Flexibility retained to develop agency-specific coverage where a unique class of records exists, although the default would always be to use functional disposal authorities
- More opportunities for resources to be pooled and refocussed on high-value, high-risk functions
- More flexible implementation of inclusive disposal classes within and across sectors
- Reduced regulatory burden on agencies to determine what information and records they need to create and how to manage these according to their value and risk.

Development methodology

Archives conducted research into and analysis of existing disposal authority frameworks in similar overseas institutions (for example, the National Archives of Australia, Public Records Office of Victoria and State Records of New South Wales).

An agile and collaborative approach was taken during the development, which will continue to evolve through stakeholder feedback and lessons learned. We anticipate that there will be a gradual transition to this approach depending on individual agencies' needs and information management capabilities.

DHB Pilot Project

Since 2017, Archives has been working with a group of District Health Boards (DHBs) and the Ministry of Health to replace the current disposal authority for DHBs (DA262). We decided to take the opportunity to test aspects of a future new approach to appraisal and disposal authority development.

The working group reviewed the DHBs' General Disposal Authority DA262 to identify areas for changes and any gaps. In general, the core and shared functions have remained the same since DA262 was approved by the Chief Archivist in 2007. The main changes identified by the working group were:

- to remove classes of information and records covered by Archives' General Disposal Authorities (GDA6 and GDA7)
- to amend the descriptions of classes to make them more inclusive
- to add classes of information and records that were identified by the DHBs as not covered by DA262

The working group agreed it was necessary to make the new disposal authority more inclusive and flexible for easier implementation. As a result, three FDAs have been developed, each encompassing clusters of classes that together cover the information and records related to a particular function. For example, a function of providing public health programmes to improve the health and wellbeing of a community are grouped together as a disposal class in an FDA. The intention is that DHBs would sign up to all three FDAs. Other agencies that have functions that fit within the classes in any of FDAs could sign up in future. For comparison, DA262 contains 23 classes each with multiple subclasses.

Draft Functional Disposal Authorities (FDA1, FDA2, FDA3)

The documents provided explain the development of each FDA and outline how it should be implemented for disposal.

[FDA1 – Personal Health Information](#) (PDF, 353 KB)

[FDA2 – Health Administration](#) (PDF, 483 KB)

[FDA3 – Population Health and Wellbeing](#) (PDF, 417 KB)

Questions to consider

There are some specific questions we would like you to consider when providing feedback on the documents.

1. What thoughts do you have regarding the concept of using a functional disposal authority approach to appraisal?
2. Do you think this concept is workable in a digital environment?
3. What do you think about the process used to develop the FDAs? Do you have suggestions for any changes?

Consultation Part 2 – Disposal recommendations for health sector information

The following FDAs have been developed to identify those information and records created and/or received which are required to be maintained as public archives, and to approve destruction or discharge of certain other information and records when no longer administratively required.

[FDA1 – Personal Health Information](#) (PDF, 353 KB) covers classes of information and records documenting the provision of health assessment, diagnosis, treatment, care services, management and/or advice to individual patients/clients.

[FDA2 – Health Administration](#) (PDF, 483 KB) covers classes of information and records created and/or received by the public offices performing administrative functions to support the management and delivery of the health and disability services to patients/clients.

[FDA3 – Population Health and Wellbeing](#) (PDF, 417 KB) covers classes of information and records documenting the research, monitoring and reporting to protect and improve health and quality of life for all New Zealanders.

Questions to consider

There are some specific questions we would like you to consider when providing feedback on the FDAs.

1. Do you agree or disagree with the draft disposal recommendations?
2. If you disagree, what are the reasons why and what would you recommend?
3. Do you agree or disagree with the proposed minimum retention periods and triggers?
4. If you disagree, what are the reasons why and what would you recommend?
5. Will it be easier or more difficult for sentencing by using FDAs? If more difficult, can you explain why?
6. Is there anything else you consider important to mention, for example, are there any classes of information and records relating to these functions which do not appear to be covered?

Consultation Part 3 – Expression of interest in obtaining disposal coverage

Archives' new approach to the disposal coverage is a shift away from the agency-specific disposal authorities to coverage focused on the business functions of government and which is known as functional disposal authorities (FDAs). The intent is to create a more streamlined and sustainable process and improved process both for agencies and Archives. We anticipate that this will not only reduce duplication and inconsistency in disposal decisions but that will also over time create a robust, precedent-based framework. There will also be the flexibility to develop agency-specific disposal authorities in instances where the pre-approved functional disposal authorities do not cover specific classes of records. The default approach would, however, be to create a new or amend an existing functional disposal authority, rather than creating many specific disposal authorities.

Ultimately, the purpose of the new approach is to facilitate the expansion of disposal coverage across government, and to encourage more active and regular implementation of authorised disposal actions.

We are currently designing a process by which agencies can express interest in signing up to an FDA and Archives can approve as appropriate. Although the process is not established yet, we would like to hear from public offices in the health sector who may create similar information and records to those covered by these 3 draft FDAs and have interest in obtaining authorised disposal coverage. This will help us to further engage with those agencies and collaboratively design the sign-up process.

Questions to consider

1. Do you undertake similar functions to those described in any of the 3 draft FDAs?
2. If you do, would the FDAs cover part or all of the core functions of your agency?
3. If only partially appropriate, can you describe why?
4. Would your agency be interested in signing up to one or all of the 3 draft FDAs to get disposal coverage?