



## Fact sheet

### Waste levy exemption 5(1)(g) - Construction and maintenance work

#### Overview

The Waste Avoidance and Resource Recovery Levy Regulations 2008 (WARR Levy Regulations) provides for a waste levy to be applied to all waste collected within the metropolitan region and received for burial at any landfill. The waste levy is intended to discourage waste disposal to landfill and to encourage resource recovery.

Regulation 5 of the WARR Levy Regulations provides a range of exemptions from payment of the levy that may be granted to the licensee of a landfill for various types of waste.

Information about how the Department of Water and Environmental Regulation manages exemption applications under the WARR Levy Regulations is provided in the [Guideline – Waste levy exemptions](#).

#### Exemption for waste used in construction or maintenance work

The WARR Levy Regulations, under regulation 5(1)(g), provides licensees of category 63, 64 or 65 landfills the ability to claim, by application, an exemption from payment of the levy on waste which has been received at their landfill for use in construction or maintenance work.

This exemption has two criteria:

1. the amount of waste to be used under this exemption must be specified in advance in a plan prepared by a registered builder or an engineer; and
2. the waste must be accepted at the landfill at no charge.

To apply for this exemption the licensee must complete and submit the approved [Application for exemption under regulation 5\(1\)\(g\)](#) form and supporting documentation to the department.

#### Examples of construction and maintenance work

Construction and maintenance work will vary between landfills. Examples of activities which may meet the criteria under regulation 5(1)(g) include, but are not limited to:

- the construction and maintenance of batters
- access ramps
- internal road networks
- hardstand areas



- parking bays.

It is important to note that an exemption for construction or maintenance works does not limit requirements set out in other legislation or override other obligations such as the preparation of a capping plan or application for a works approval.

### **Can I claim waste used for capping as construction or maintenance work?**

Waste used for capping systems will only be exemptible to the extent it relates to an exemption under regulations 5(1)(a) and 5(1)(h) of the WARR Levy Regulations.

It is not considered that the placing of waste over waste previously disposed of to landfill constitutes construction or maintenance work.

### **What types of materials can be claimed under this exemption?**

Only waste that is specified in a plan prepared in advance by a registered builder or engineer may be used and claimed in the construction and maintenance work under an exemption granted under regulation 5(1)(g).

Materials that are used in the construction or maintenance work which do not constitute waste can include but are not limited to:

- site-derived material, such as sand dug up from the landfill where the works are occurring
- materials purchased and brought onto the premises to undertake the construction or maintenance works, such as new concrete, bitumen and clay.

Reprocessed construction and demolition waste can be used. However, acceptance of waste into the landfill must be in accordance with the waste acceptance criteria specified in the landfill's licence.

### **Can I charge to accept the waste?**

To be eligible for an exemption under regulation 5(1)(g), the licensee will need to demonstrate that the waste subject to the exemption was received free of all charges which include administrative, handling or any other fees.

Failure to demonstrate that the waste was received free of all charges will result in a refusal.

### **How much construction material can I claim an exemption for?**

The amount of waste for which an exemption can be claimed under regulation 5(1)(g) will not be greater than the amount specified in the submitted plan prepared by a registered builder or engineer. A plan must calculate the volume of material required for the construction in cubic metres, which can be converted to tonnes based on a conversion factor relevant to the waste material used in construction.

### **What documentation do I need to submit with the application?**

The licensee must submit plans prepared by a registered builder or engineer, which:



- illustrate in (a) drawing(s) the construction or maintenance work to be completed, including cross sections
- stipulate the amount of waste, in cubic metres, which is required
- demonstrate how the volume was calculated
- detail what waste materials are proposed to be used
- show where on the site the works are to be carried out.

In addition to the plan, copies of the registered builder or engineer's qualifications will also need to be supplied to ensure this criteria is met.

The plan must be prepared prior to the commencement of the works and the licensee must submit the plan with the exemption application prior to commencing the works or accepting the waste subject to the exemption. What happens if the amount of waste in the exemption differs from what is actually used?

The department requires construction work to be completed in accordance with the approved plans. In the event that the volume or weight of the waste exceeds the amounts specified in the plan, a levy will be liable on the additional amounts. Significant variance from the amount of waste specified in the plan is not expected. If the full allocation of exempt waste is not required for the purposes of the work, the remaining waste disposed of to landfill is subject to the waste levy.

### **How do I apply for this exemption?**

The licensee of a licensed landfill can apply to the department for an exemption under regulation 5(1)(g) by completing and submitting the approved [Application for exemption under regulation 5\(1\)\(g\)](#) form.

### **How is an exemption application assessed?**

The Chief Executive Officer (CEO) of the department will grant or refuse an exemption request.

This decision is based on the appropriateness of the request and its compliance with the criteria of the particular exemption sought.

The assessment criteria for regulation 5(1)(g) are:

1. A plan has been prepared in advance by a registered builder or engineer which:
  - a. illustrates in (a) drawing(s) the construction or maintenance work to be completed, including cross sections
  - b. stipulates the amount of waste, in cubic metres, that is required;
  - c. demonstrates how the volume was calculated
  - d. details what waste materials are proposed to be used
  - e. shows where the works are to be carried out in relation to the entire site and landfill cells.
2. Waste will be used for construction or maintenance work at the landfill.
3. No fees or charges are to be received by the licensee for accepting the waste.



## Conditions of exemptions

If an exemption application is granted, the licensee will be issued with an exemption notice which may be subject to conditions. Regulation 5(5A) of the WARR Levy Regulations provides a range of conditions that may be applied.

## What happens if an exemption condition is breached?

Under regulation 6 of the WARR Levy Regulations, the exemption ceases to have effect if any condition of an exemption notice is breached. The exemption will become invalid at the time the breach occurs.

## Will I be notified of the outcome of my application?

In the event that the exemption is granted, the licensee will receive a written notice granting the exemption, which may include a number of conditions specifying certain requirements.

When an exemption application is refused, the licensee will be provided with a draft decision document outlining the reasons for the decision to refuse the exemption application. The licensee will have 21 business days to respond to the draft decision document before the decision is finalised.

## Can I appeal an exemption decision?

The licensee may apply to the State Administrative Tribunal for a review of the decision if an exemption application is refused or a licensee is aggrieved by any conditions or limitations imposed on an exemption notice.

The applicant will need to contact the State Administrative Tribunal directly, via: [www.sat.justice.wa.gov.au/](http://www.sat.justice.wa.gov.au/).

## Do I have to pay the levy while my exemption application is being assessed?

If a levy payment is due while your exemption application is being assessed, all waste received during that return period must be declared in your levy return, including the waste subject to the exemption application, and payment of the full levy amount must be made.

In the event that the exemption is granted retrospectively, the department will contact the licensee and either refund or credit the licensee the equivalent amount of levy paid in that return period for the waste which is subject to the exemption.

If payment is not received in full and the exemption is refused, in addition to having to pay the levy amount subject to the exemption, there is payable by way of penalty, in addition to the amount of the levy, an amount calculated at the rate of 20% per annum on the amount of the levy that was not paid.

It is recommended that exemption applications are submitted in accordance with the exemption application submission dates outlined in [Guideline – Waste levy exemptions](#).



While the time required to assess an exemption application varies, generally a decision is made within 30 business days.

### **How long does an exemption last?**

All exemption notices will specify the period that the exemption is valid for. The validity period specified in the exemption notice will vary depending upon the circumstances of the exemption.

An exemption ceases to have effect at the conclusion of the validity period or immediately if an exemption condition is breached.

### **Calculating the amount of exempt waste for each return period**

Licensees will need to calculate the amount of exempt waste to claim for each return period following the issue of an Exemption Notice.

#### *Category 63 (Class I) landfills*

For landfills in the metropolitan region, the volume of exempt waste should be calculated using the [Approved manner for estimating the volume or weight of waste received at and disposed of to landfills](#) (approved manner) in accordance with regulation 10(8) of the WARR Levy Regulations.

For licensed landfills outside the metropolitan region that have received waste collected within the metropolitan area, the volume of exempt waste should be calculated in the approved manner in accordance with regulation 12A(2)(b).

#### *Category 64 (Class II and III) and 65 (Class IV) landfills*

The amount of exempt waste received should be calculated using the landfill's weighbridge.

For landfills without a weighbridge or that have a valid exemption under regulation 5(2), the weight of exempt waste should be calculated using the approved manner in accordance with regulation 9 (2A).

### **More information**

Please contact the department's waste levy officers on 6364 6963 for further advice on waste levy exemptions or related matters.

This document is available in alternative formats and other languages on request.  
Effective January 2020

### **Related documents (if applicable)**

Additional publications about exemptions are available online at:  
[www.der.wa.gov.au/your-environment/waste/151-landfill-levy](http://www.der.wa.gov.au/your-environment/waste/151-landfill-levy).



## **Legislation**

This document is provided for guidance only. It should not be relied upon to address every aspect of the relevant legislation. Please refer to Western Australian Legislation) for copies of the relevant legislation, available electronically from the Parliamentary Counsel's Office website at [www.legislation.wa.gov.au](http://www.legislation.wa.gov.au)

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## **Legal advice**

The information provided to you by the department in relation to this matter does not constitute legal advice. Due to the range of legal issues potentially involved in this matter, the department recommends that you obtain independent legal advice.