



## Fact sheet

### Waste levy exemption 5(1)(a) - Waste that is, or will be, used as cover after the completion of landfill operations

#### Overview

The *Waste Avoidance and Resource Recovery Levy Act 2007* (WARR Levy Act) and the *Waste Avoidance and Resource Recovery Levy Regulations 2008* (WARR Levy Regulations) provide for a levy to be paid for waste received at licensed landfills in the metropolitan region and waste collected within the Perth metropolitan region that is received at licensed landfills outside of the metropolitan region.

Regulation 5 of the WARR Levy Regulations outlines exemptions where the waste levy will not apply to waste received at licensed landfills if an exemption is granted.

Regulation 5(1)(a) of the WARR Levy Regulations permits licensees of category 63, 64 or 65 landfills to apply for an exemption from payment of the levy for waste that is, or will be, used after the completion of landfill operations to cover waste disposed of at the licensed landfill in compliance with the conditions on the licence, or any implementation conditions as defined in the *Environmental Protection Act 1986* (EP Act) section 3(1).

This exemption applies to waste that is used as the final cover and/or capping at landfill when landfill operations have been completed.

#### Exemption for waste used as final cover or capping

The exemption only applies in the following circumstances:

1. the licensee is required under conditions on their Part V Division 3 licence, or a Ministerial Statement issued under the EP Act, to apply final cover and/or capping to waste disposed of on the premises after the completion of landfill operations; and
2. the waste has been accepted by the licensee at no charge.

To apply for this exemption the licensee must complete and submit to the Department of Water and Environmental Regulation the approved [Application for exemption under regulation 5\(1\)\(a\)](#) form and provide the information referred to in that form.

#### Can I charge a fee when accepting final cover waste material?

To be eligible for an exemption under regulation 5(1)(a) the licensee must demonstrate to the department that the waste subject to the exemption was, or will be, accepted free of charge, which includes any administrative or handling fees.

Failure to demonstrate that the waste was accepted free of charge will result in the exemption application being refused.



### **How do I calculate how much final cover and capping I can claim?**

The amount of final cover material for which an application for exemption can be claimed will vary depending upon the landfill.

The amount of waste that can be claimed under this exemption for final cover and capping must reflect the requirements for that activity under the conditions of the Ministerial Statement or Part V Division 3 licence for the licensed landfill.

The information that must be submitted to the department for an application under regulation 5(1)(a) is set out in the approved form.

Please note that this final cover exemption is specific to waste that is, or will be, used after the completion of landfill operations.

Waste used to temporarily cover individual cells that are closed from time to time as part of normal operations at the site cannot be the subject of a regulation 5(1)(a) exemption. Only the final layer of waste that is cover and capping, and which signifies the completion of the landfill operations at that cell, can be considered under this exemption.

### **Does this exemption apply to daily cover?**

The requirement to apply daily cover may exist pursuant to conditions of the landfill licence, particularly where there is putrescible waste. However, an exemption for daily cover cannot be granted under regulation 5(1)(a), as this regulation only applies to cover that is, or will be, used after the completion of landfill operations.

The requirement to apply daily cover at category 64 and 65 landfills is already addressed through formulas for calculating levy liability under the WARR Levy Regulations.

Under regulation 12(2) of the WARR Levy Regulations, the levy is only payable on 92% of the non-exempt waste disposed of to landfill at category 64 and 65 landfills. This 8% deduction in the levy payable reflects the need for select landfills to apply daily cover as part of regulatory requirements.

### **When should I seek an exemption for final cover applied at a licensed landfill under regulation 5(3A)?**

Regulation 5(3A) contains a transitional levy exemption for uncontaminated soil or other clean fill that was received at a licensed landfill at no charge before 5 February 2020 and was or will be used after the completion of landfill operations to cover waste disposed of on the premises. The exemption will be repealed in several years when all licensed landfills have transitioned to the new exemption under regulation 5(1)(a), and it is no longer required.

The maximum amount that can be claimed under this exemption is 500 mm of final cover over the disposed waste.

It is recommended that if a licensee is required to comply with conditions for applying



final cover at their landfill under a Ministerial Statement or licence, and the depth required exceeds 500 mm, the licensee considers applying for final cover under regulation 5(1)(a).

It is recommended that licensees contact the department before applying for an exemption under regulation 5(3A) to discuss if it is the appropriate exemption for their landfill. Please refer to the fact sheet on regulation 5(3A) for more information.

### **When should I seek an exemption for final cover applied at a licensed landfill under regulation 5(1)(h)?**

The requirement for applying final cover and capping at a landfill will likely arise in one of two circumstances:

1. as a result of a Ministerial Statement or licence condition to cover waste disposed of at the landfill after the completion of all landfill operations
2. as a result of a closure notice being issued under the provisions of section 68A of the EP Act.

If waste is used for final cover and capping as required pursuant to a licence condition or implementation condition under a Ministerial Statement, an exemption under regulation 5(1)(a) may be granted.

If the final cover and capping at a licensed landfill is required as a result of a closure notice issued under section 68A of the EP Act, a waste levy exemption can be sought under regulation 5(1)(h) of the WARR Levy Regulations.

### **When should I apply for this exemption?**

Exemptions under regulation 5(1)(a) are generally issued for a period of 12 months, coinciding with the financial year.

An application should be submitted prior to 30 June of each year. However, retrospective applications (i.e. applications submitted after the levy has become payable or has been paid) will be considered. It is recommended that applications are submitted prior to cover material being received by the landfill to ensure that the material will not be subject to the levy.

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

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

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

The Chief Executive Officer (CEO) of the department (or their delegate) will assess the information provided in the approved form to determine if it meets the requirements of the exemption under the WARR Levy Regulations.

Following this assessment, the CEO will grant or refuse an exemption.



## **Conditions of exemptions**

If an exemption application is granted, the licensee will be issued with an exemption notice. The exemption may be subject to conditions, or limited to circumstances set out in the notice. Regulation 5(5A) of the WARR Levy Regulations specifies examples of conditions that may be imposed.

## **What happens if a condition of an exemption is breached?**

Under regulation 5(6) of the WARR Levy Regulations, the exemption ceases to have effect if any condition of an exemption notice is breached.

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

If the CEO decides to approve an exemption application, the licensee will receive a written notice of this decision.

If the CEO intends to refuse an exemption application, the licensee will be provided with a draft decision document outlining the reasons why the CEO intends to refuse the application. The licensee will generally have 21 business days to respond to the draft decision document before the CEO makes a final decision.

While the time required to assess an exemption application varies, generally a decision will be made within 30 business days following the receipt of a complete application.

## **Can I appeal an exemption decision?**

If the CEO refuses an exemption application, or imposes conditions or limitations that the licensee does not agree with, the licensee may apply to the State Administrative Tribunal for a review of the decision.

An application for review of the CEO's decision is made to the State Administrative Tribunal directly. Information about applying to the Tribunal is available at: [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?**

A licensee must pay the levy by the due date, including any levy payable for waste that is the subject of a pending exemption application.

The due date is 28 days after the end of the relevant return period. If payment is not received in full by the due date, a penalty is payable on the overdue amount calculated at a rate of 20% per annum.

If the exemption is granted retrospectively, the department will refund the licensee the amount of levy overpaid and any penalty paid on that amount. Alternatively, the department may credit the licensee with these amounts, if the licensee so elects.

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



### **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**

Following the issue of an exemption notice, licensees must calculate or estimate the amount of exempt waste to claim for each return period.

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

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

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

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

Under regulation 8, the weight of exempt waste received must be calculated using the landfill's weighbridge, unless the landfill does not have a weighbridge or the licensee has obtained an exemption from the requirement to weigh waste on a weighbridge under regulation 5(2).

If the landfill does not have a weighbridge, or the licensee has been granted an exemption from the requirement to weigh waste on a weighbridge, the weight of exempt waste must be estimated in the approved manner in accordance with regulation 9(2A).

### **More information**

Please contact the department 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 waste levy 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.