



## 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. The waste levy is intended to discourage waste disposal to landfill and to encourage resource recovery.

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 section 3(1) of the *Environmental Protection Act 1986* (EP Act).

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

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

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

The exemption applies only in the following circumstances:

1. the licensee is required, under conditions on a licence or 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
2. the waste has been accepted by the licensee at no charge.

Waste used for daily cover or 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 which signifies the completion of the landfill operations at that cell, can be considered under this exemption.



### **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 much material can I claim for final cover?**

The amount of final cover material which can be claimed under an exemption will vary depending on the landfill.

The amount of waste that can be claimed under this exemption for final cover must reflect the requirements under the conditions of the Ministerial Statement or Part V Division 3 licence for the licensed landfill. Generally, the landfill licence will specify the depth to which cover must be placed over waste disposed of at the landfill.

The amount of material required to cover the waste disposed of at the premises can generally be calculated by determining the area of the landfill that is required to be covered and multiplying by the depth of cover specified in the landfill licence.

Exemptions may be granted for the total amount of final cover required for the entire landfill, or for the amount required for an individual cell or cells.

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

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

No. Regulation 5(1)(a) only provides for an exemption for waste used as cover after the completion of landfill operations.

Licence conditions may require daily cover to be applied at category 64 and 65 landfills, particularly where there is putrescible waste. Regulatory requirements to apply daily cover are already addressed through formulas for calculating levy liability under the WARR Levy Regulations, by providing an 8 per cent deduction. Under regulation 12(2) of the WARR Levy Regulations, the levy is only payable on 92 per cent of the leviable waste disposed of to landfill at category 64 and 65 landfills.

### **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 after 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 a regulation 5(3A) exemption is 500 mm of final cover over the disposed waste. If a Ministerial Statement or licence requires final cover to be applied at a depth of more than 500 mm, it is recommended that the licensee considers applying for an exemption 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 by 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.

Please refer to the [fact sheet on regulation 5\(1\)\(h\)](#) for more information.

### **When should I apply for an exemption under regulation 5(1)(a)?**

An application should be submitted prior to cover material being received by the landfill to ensure that the material will not be subject to payment of the levy. However, retrospective applications (that is, applications submitted after the levy has become payable or has been paid) will be considered.

It is recommended that licensees apply for an exemption under regulation 5(1)(a) prior to receiving the waste intended for use as cover to ensure that the material is exempt from payment of the waste levy. Please note that exemptions must be granted before levy payment is due (28 days after the end of a return period) to avoid a levy liability arising.

### **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 the approved [exemption 5\(1\)\(a\) application form](#) along with the information referred to in that form.



### **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.

The application will be assessed against the following criteria:

1. The landfill is subject to a condition in a Ministerial Statement or licence under Division 3, Part V of the EP Act requiring final cover and/or capping to be applied to waste disposed of on the premises.
2. The material will be, or has been, used after the completion of landfill operations to cover waste disposed of on the premises.
3. No charge or fee was received by the licensee for the waste accepted.
4. The licensee has calculated the total amount of waste required to cover the waste disposed to landfill to comply with a condition of their Ministerial Statement or licence, and has supplied supporting documentation as required in the approved form, which demonstrates how the calculation was made. Both active and proposed cells at the licensed landfill can be included in the calculation.
5. The calculations, plans and other documentation provided by the licensee in the application for exemption are consistent with the conditions of the landfill licence or Ministerial Statement in relation to final cover and capping.

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

### **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 granting the exemption.

If the CEO intends to refuse an exemption application, the licensee will be provided with a draft decision document outlining the reasons 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 assessment times vary, generally a decision will be made within 30 business days following the receipt of a complete application.

### **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. The exemption will become invalid at the time the breach occurs.

### **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.

To apply, the applicant will need to contact the [State Administrative Tribunal](#) directly.

### **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. 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 cent 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, if the licensee so elects.

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

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

All exemption notices will specify the period that the exemption is valid for. The validity period will vary depending upon the circumstances of the exemption. This will generally be for the period during which the waste to be used for final cover will be (or has been) received at the landfill.

Where a licensee is seeking an exemption for the balance of the amount of material required to cover all waste disposed at the premises, exemptions under regulation 5(1)(a) are generally issued for the period of landfill operations, until the expiry of the landfill licence.

If a licensee is seeking an exemption for material required to cover a particular cell or cells at the landfill, an exemption may be granted for the time as specified in the application for exemption or as determined by the CEO.

Please note that the exemption period cannot exceed the validity period of a landfill licence.

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 determined using 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).

## Further information

Find additional publications about the [waste levy and exemptions](#).

For more advice on waste levy exemptions or related matters, please email [wastelevy@dwer.wa.gov.au](mailto:wastelevy@dwer.wa.gov.au).

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

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## 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 from the [Parliamentary Counsel's Office](#).

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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.