



Fact sheet

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

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)(g) 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 has been received at their landfill for use in construction or maintenance work.

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 in construction or maintenance work

This exemption applies to waste that is used 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
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 [exemption r\(1\)\(g\) application 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, construction and maintenance of internal roads and access ramps and the construction of hardstand areas. However, it does not generally include ordinary landfilling activities, including applying cover.

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 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 eligible for an exemption to the extent it relates to an exemption under regulations 5(1)(a) and 5(1)(h) of the WARR Levy Regulations.

Placing waste over waste previously disposed of to landfill is not considered to constitute construction or maintenance work.

What types of materials can be claimed under this exemption?

A waste levy exemption under regulation 5(1)(g) may be claimed only for waste that is specified in a plan prepared in advance by a registered builder or engineer and is used for construction and maintenance.

Can I use other materials for the construction or maintenance work without paying the levy?

Materials which do not constitute waste may be used for construction or maintenance work without requiring payment of the levy or an exemption. These include, but are not limited to:

- site-derived material, such as sand excavated from the landfill premises 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.

For further information, see the department's fact sheet on [assessing whether material is waste](#).

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.

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.



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 that is required to complete the work
- demonstrate how the volume was calculated, including the conversion factor used to convert the volume to weight (for category 64 or 65 landfills)
- detail what waste materials are proposed to be used
- show the location of the proposed works in relation to the entire site and landfill cells.

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

When should I apply?

It is recommended that licensees apply for an exemption under regulation 5(1)(g) prior to receiving the waste intended for use for construction or maintenance work 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. Exemptions granted after this time will result in the payment of a refund on the amount of levy paid by the licensee.

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. Significant variance from the amount of waste specified in the plan is not expected.

If the volume or weight of the waste exceeds the amounts specified in the plan, levy will be payable on the additional amounts.

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 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 waste will be used for construction or maintenance work at the landfill.
2. No charges or fees are received by the licensee for accepting the waste.
3. The licensee has submitted suitable plans prepared in advance by a registered builder or engineer, which specify the amount of waste required to complete the work.
4. Waste will be used for construction or maintenance work at the landfill.

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 be 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 an exemption condition 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 apply a credit to the licensee's future levy payments, if the licensee so elects.

It is recommended that exemption applications are 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 in the construction or maintenance work is received at the landfill.

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 received for each return period and declare this amount in levy returns submitted under regulation 18 of the WARR Regulations.

Category 63 (Class I) landfills

For 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](#) (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 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.

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.