



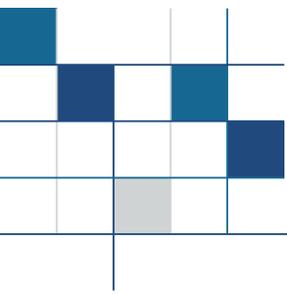
# Guideline

## Waste levy exemptions

Activities regulated under the:

Waste Avoidance and Resource Recovery Levy Regulations 2008

January 2020



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# 1. Purpose

This guideline relates to the assessment of applications for exemptions under regulation 5 of the Waste Avoidance and Resource Recovery Levy Regulations 2008 (WARR Levy Regulations). This guideline outlines the Department of Water and Environmental Regulation's (the department) position concerning what waste can be the subject of an exemption and how to apply.

# 2. Scope

This guideline will be used by operators of landfill premises who are liable to pay the waste levy, when applying for exemptions. The department's officers will use the guideline to inform their assessment of applications for exemptions.

Guidelines provide direction on how the department interprets and applies the legislation it administers.

Department guidelines are not mandatory considerations; rather, their purpose is to assist applicants to provide information in the best possible manner to ensure efficient and effective assessment of their application.

Applications that do not align with the appropriate guidelines may result in protracted assessment timeframes and, if the information provided is not sufficient for the department to complete an assessment, the application may be declined or refused.

# 3. Context

The *Waste Avoidance and Resource Recovery Levy Act 2007* (WARR Levy Act) provides for a levy to be imposed in respect of waste received at disposal premises.

A levy has been prescribed by the WARR Levy Regulations in respect of waste received at landfill premises in the metropolitan region, and waste collected within the metropolitan region and received at landfill premises located anywhere in the state.

The levy is intended to discourage waste disposal to landfill and to encourage resource recovery in accordance with the objectives of the *Waste Avoidance and Resource Recovery Act 2007* (WARR Act).

Operators of landfill premises in the metropolitan region are liable to pay the levy on:

- waste received and disposed of to landfill at category 63 prescribed premises (Class I inert landfill sites)
- waste received for disposal to landfill at a category 64 prescribed premises (Class II or Class III putrescible landfill sites) or category 65 prescribed premises (Class IV secure landfill sites) if both:
  - the premises have a weighbridge
  - no exemption to the requirement to weigh waste on a weighbridge has been granted.



- waste received and disposed of to landfill at category 64 prescribed premises (Class II or Class III putrescible landfill sites) or category 65 prescribed premises (Class IV secure landfill sites) if either:
  - the premises do not have a weighbridge
  - an exemption to the requirement to weigh waste on a weighbridge has been granted.

Operators of landfill premises outside the metropolitan region are liable to pay the levy on the waste described above if the waste was collected within the metropolitan region.

Notwithstanding the above, a licensee of a landfill premises is not liable to pay the levy for waste if an exemption has been granted for that waste under regulation 5(4) of the WARR Levy Regulations.

Regulation 5 of the WARR Levy Regulations provides for a range of exemptions from the payment of the levy and associated requirements to be granted to licensees of category 63, 64 and 65 prescribed premises. Only the licensee of a licensed landfill may apply for an exemption under that regulation. Exemption applications will be assessed by the department in accordance with the WARR Levy Regulations and this guideline.

## 4. Legislation

This guideline relates to the assessment of exemption applications under regulation 5 of the WARR Levy Regulations. Licensees may claim an exemption using the appropriate [approved form](#) under regulations 5(1)(a)–(i), 5(2) and 5(3) of the WARR Levy Regulations.

### Regulation 5. Exemptions

- (1) A licensee may by application claim an exemption from these regulations for the following waste received at a licensed landfill in any return period:
  - (a) waste that:
    - (i) was accepted by the licensee at no charge; and
    - (ii) 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* section 3(1).
  - (b) waste that is not disposed of to landfill but is collected and stored at a licensed landfill for reuse, reprocessing, recycling or use in energy recovery
  - (c) waste reasonably removed from an orphan site as defined in the *Contaminated Sites Act 2003* section 32 by a public authority to mitigate or prevent a risk of harm to human health or the environment
  - (d) hazardous waste reasonably removed by a public authority
  - (e) waste resulting from storm, fire, flood or other natural disaster that cannot reasonably be reused, reprocessed, recycled or used in energy recovery



- (f) waste that:
  - (i) is deposited on a shoreline by the action of water
  - (ii) is reasonably removed from the shoreline by a public authority to mitigate or prevent a risk of harm to human health or the environment; and
  - (iii) cannot reasonably be reused, reprocessed, recycled or used in energy recovery.
- (g) waste used for construction or maintenance work carried out on the licensed landfill if:
  - (i) the amount of waste is specified in advance in a plan prepared by a registered builder or an engineer; and
  - (ii) no charge is made by the licensee for accepting the waste.
- (h) waste used for cover on the licensed landfill if:
  - (i) a closure notice has been given in respect of the licensed landfill under the *Environmental Protection Act 1986* section 68A(2); and
  - (ii) the waste is used as required by the closure notice.
- (i) asbestos containing material if the material is:
  - (i) taken to the licensed landfill otherwise than in contravention of the Environmental Protection (Controlled Waste) Regulations 2004, regulation 44; and
  - (ii) buried at the licensed landfill in compliance with the conditions on the licence.
- (2) A licensee may by application in the approved form claim an exemption from the requirement under regulation 8 to weigh waste on a weighbridge.
- (3) A licensee of a category 63 licensed landfill may by application in an approved form claim an exemption from the requirements of regulation 10(5) and (6) in respect of a return period if no waste has been disposed of to landfill on the licensed landfill.
- (3A) A licensee may by application claim an exemption from these regulations for uncontaminated soil or other clean fill received at a licensed landfill before the day on which the Waste Avoidance and Resource Recovery Levy Amendment Regulations 2020 regulation 4 comes into operation if:
  - (a) it was accepted by the licensee at no charge; and
  - (b) it is, or will be used after the completion of landfill operations to cover, to a depth of up to 500 mm, waste disposed of on the premises.
- (3B) An application under this regulation must:
  - (a) be in the approved form; and
  - (b) include or be accompanied by the information required by the CEO.

The Chief Executive Officer (CEO) of the department (or his or her delegated officer) may grant, refuse to grant, or revoke an exemption under regulation 5(4). An exemption may be granted subject to conditions – including those specified in regulation 5(5A) – or limited to circumstances specified in the exemption notice.

An applicant aggrieved by the decision of the CEO to refuse to grant an exemption, or to impose conditions or limitations upon the granting of an exemption, may apply to the State Administrative Tribunal for a review of that decision under regulation 6 of the WARR Levy Regulations.



## 5. Outcome

The objectives of this guideline are to:

1. Provide guidance on the department's management of exemption applications under regulation 5 of the WARR Levy Regulations.
2. Clarify the types of waste that can be the subject of an exemption.
3. Assist licensees in completing applications for exemptions.
4. Increase transparency regarding the processing and assessment of exemption applications.

## 6. Processing of exemptions

The department will manage applications for exemptions under regulation 5 of the WARR Levy Regulations in accordance with the following statements.

### 6.1 Applications for exemptions

1. All exemption applications made under regulations 5(1), 5(2) and 5(3) of the WARR Levy Regulations must be submitted in the [approved form](#) and must contain all of the information referred to in that form. The department will not process exemption applications that are not in the approved form or that are incomplete.
2. The department may request that the applicant provide additional information. The CEO may refuse the application if the applicant has not provided sufficient information to enable the department to assess the application properly.
3. Where possible, exemption applications should be submitted in accordance with the timeframes outlined in Appendix A.
4. An application can be made under regulation 5(1) after the date by which the relevant levy is required to be paid or has been paid. However, the department may refuse to approve a retrospective application if the passage of time prevents the department from obtaining the necessary information or otherwise being able to assess the application properly.

### 6.2 Assessment of exemption applications

1. The department will confirm receipt of an exemption application in writing.
2. The department will endeavour to determine the outcome of an exemption application within 30 working days of receipt of a complete application in the approved form.
3. The department may consider the applicant's compliance with conditions of previously granted exemptions when assessing an exemption application.
4. The department may consider previous exemptions granted to a licensee under regulation 5 of the WARR Levy Regulations when assessing an exemption application, to obtain an understanding of past and current operations and/or activities carried out on the landfill premises.



5. The department will assess exemption applications in accordance with the criteria outlined in the WARR Levy Regulations and Appendix B of this guideline to ensure consistency in the assessment and decision-making process.
6. For the purposes of an exemption application under regulation 5(1)(a) or 5(1)(g), the department considers the term 'no charge' to mean that the waste has been accepted by the licensee free of any charges including administrative and handling fees.
7. If the CEO intends to refuse an exemption application, the department will provide the applicant with a draft decision document outlining the reasons why the CEO intends to refuse the application. The applicant will have 21 business days to respond to the draft decision document before the final decision is made.
8. If an exemption is granted under regulation 5(4)(a) or 5(4)(b) of the WARR Levy Regulations, written notice of that decision will be given to the applicant. The notice will contain an identification number.
9. If an exemption is granted following an application under regulation 5(1), the notice will specify the period for which the exemption applies. The period for which the exemption applies will be in accordance with the 'standard exemption validity periods' specified in Appendix A of this guideline, unless the CEO considers that the circumstances warrant a different period.
10. An exemption may be subject to conditions (for example, conditions requiring the licensee to deal with the waste in certain ways). An exemption notice may also specify that the exemption is limited to certain circumstances.
11. An applicant aggrieved by a decision of the CEO to refuse to grant an exemption, or to impose conditions or limitations upon the granting of an exemption, may apply to the State Administrative Tribunal for a review of the decision in accordance with regulation 6 of the WARR Levy Regulations.

### **6.3 Refund of levy**

1. A licensee must pay the required levy by the due date (within 28 days after the end of the relevant return period) even if the waste is the subject of a pending exemption application.
2. If payment is not received by the department in full by the due date, a penalty is payable on the overdue amount calculated at a rate of 20% per annum, calculated daily pro rata.
3. If an exemption is granted following levy payment, the department will refund the licensee the amount of levy that has been overpaid and any penalty paid on that amount. Alternatively, the department may credit the licensee with the overpaid levy and the interest if the licensee so elects.

### **6.4 Revocation and compliance**

1. An exemption ceases to have effect if a condition to which the exemption is subject is breached. The exemption will cease to have effect when the breach occurs, even if the department is unaware of the breach at the time.



2. If the department revokes an exemption under regulation 5(4)(c) of the WARR Levy Regulations, it will provide written notice of this decision to the licensee, including an explanation of why the exemption has been revoked.



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# Document implementation

This guideline comes into effect on the day it is published. Applications received after publication will be assessed in accordance with the information contained herein.



## Related documents

<b>Department documents</b>	
<b>Author</b>	<b>Title</b>
	Fact sheet: Waste levy exemption 5(1)(a) – Waste that is, or will be, used as cover after the completion of landfill operations
	Fact sheet: Waste levy exemption 5(1)(g) – Construction and maintenance work
	Fact sheet: Waste Levy exemption 5(3A) – Uncontaminated soil or other clean fill that is received at a licensed landfill for final cover before 5 February 2020



## Custodian and review

The currency of this document will be continuously evaluated, and reviewed no later than three years from the date of issue or sooner as required.

<b>Document details</b>	
Lead group (custodian)	Strategic Policy
Current version	January 2020



## Appendices

### Appendix A - Recommended exemption application submission dates

Summary of exemption provision	Regulation	Recommended submission date	Standard exemption validity period
Waste that is, or is to be, used after the completion of landfill operations to cover waste disposed of on the premises	5(1)(a)	Prior to the acceptance of the waste	Financial year
Waste which is collected and stored for reuse, reprocessing, recycling or use in energy recovery	5(1)(b)	Not applicable	Not applicable
Waste reasonably removed from an orphan site by a public authority	5(1)(c)	Prior to the acceptance of the waste	For the period the waste will be accepted
Hazardous waste removed by a public authority	5(1)(d)	Prior to the acceptance of the waste	For the period the waste will be accepted
Waste resulting from a natural disaster	5(1)(e)	Prior to, or as soon as practicable after, the acceptance of the waste	For the period the waste will be accepted
Waste deposited on a shoreline by the action of water	5(1)(f)	Prior to, or as soon as practicable after, the acceptance of the waste	For the period the waste will be accepted
Waste used for construction or maintenance work carried out on the licensed landfill	5(1)(g)	Prior to commencement of construction or maintenance work	For the period of construction or maintenance work



Summary of exemption provision	Regulation	Recommended submission date	Standard exemption validity period
Waste used for cover as required by a closure notice	5(1)(h)	As soon as practicable following receipt of a closure notice and prior to undertaking any actions	In accordance with the closure notice
Asbestos containing material	5(1)(i)	Before 31 July	Financial year
An exemption to weigh waste on a weighbridge	5(2)	As soon as practicable after the licensee becomes aware that the weighbridge is not or will not be operational	Period weighbridge is not operational
An exemption from conducting and lodging a survey	5(3)	Q1: 30 September Q2: 31 December Q3: 31 March Q4: 30 June	Return period
Uncontaminated soil or other clean fill that was accepted prior to 4 February 2020 at no charge to be used after the completion of landfill operations to cover, to a depth of 500mm, waste disposed on the premises	5(3A)	Before 31 July	Financial year



## Appendix B - Exemption assessment criteria

Exemption	Criteria
<p>Regulation 5(1)(a)</p> <p>Waste that is, or is to be used after the completion of landfill operations to cover waste disposed of on the premises</p>	<ol style="list-style-type: none"> <li>1. The landfill is subject to a condition in a Ministerial Statement or licence under Part V Division 3 of the EP Act requiring final cover and/or capping to be applied to waste disposed of on the premises.</li> <li>2. The material will be, or has been used after the completion of landfill operations to cover waste disposed of on the premises.</li> <li>3. No charge or fee was received by the licensee for the waste accepted.</li> <li>4. The licensee is to calculate the total amount of waste that would be required to cover the waste disposed to landfill as required under a condition of their Ministerial Statement or licence and supply 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.</li> <li>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.</li> </ol>



Exemption	Criteria
<p>Regulation 5(1)(b)</p> <p>Waste which is collected and stored for reuse, reprocessing, recycling or use in energy recovery</p>	<p>The waste levy is only required to be paid on:</p> <ul style="list-style-type: none"> <li>• waste received for disposal to landfill</li> <li>• waste received and disposed of to landfill.</li> </ul> <p>Any waste that is received and stored for reuse, reprocessing, recycling or use in energy recovery is not subject to the waste levy. Therefore no exemption is required for this type of waste.</p>
<p>Regulation 5(1)(c)</p> <p>Waste reasonably removed from an orphan site by a public authority</p>	<ol style="list-style-type: none"> <li>1. The origin of the waste is an 'orphan site' as defined under sections 3 and 32 of the <i>Contaminated Sites Act 2003</i>.</li> <li>2. The entity in control of the site is a 'public authority' as defined in section 3 of the <i>Waste Avoidance and Resource Recovery Act 2007</i> (WARR Act).</li> <li>3. The waste was removed from the site to mitigate or prevent risk of harm to human health or the environment.</li> </ol>



Exemption	Criteria
<p>Regulation 5(1)(d)</p> <p>Hazardous waste removed by a public authority</p>	<ol style="list-style-type: none"> <li>1. A 'public authority' as defined in section 3 of the WARR Act removed the waste.</li> <li>2. Alternative methods of dealing with the waste, that is <i>in situ</i> remediation, were impracticable.</li> <li>3. The waste posed an immediate risk of harm to human health or the environment.</li> </ol>
<p>Regulation 5(1)(e)</p> <p>Waste resulting from a natural disaster</p>	<ol style="list-style-type: none"> <li>1. The waste resulted from a storm, fire, flood or other natural disaster.</li> <li>2. The waste cannot reasonably be reused, reprocessed, recycled or used in energy recovery.</li> </ol>
<p>Regulation 5(1)(f)</p> <p>Waste deposited on a shoreline by the action of water</p>	<ol style="list-style-type: none"> <li>1. The waste was deposited on a shoreline by the action of water.</li> <li>2. The waste cannot reasonably be reused, reprocessed, recycled or used in energy recovery.</li> <li>3. The waste was removed to mitigate or prevent a risk of harm to human health or the environment.</li> <li>4. A 'public authority' as defined in section 3 of the WARR Act removed the waste.</li> </ol>
<p>Regulation 5(1)(g)</p> <p>Waste used for construction or maintenance work carried out on the licensed landfill</p>	<ol style="list-style-type: none"> <li>1. The waste will be used for construction or maintenance work at the landfill. This may include construction and maintenance of:             <ol style="list-style-type: none"> <li>a. batters</li> <li>b. hardstand areas</li> <li>c. access ramps</li> <li>d. roads</li> <li>e. parking bays.</li> </ol> </li> </ol>



Exemption	Criteria
	<p>However, it does not generally include ordinary landfilling activities, including applying cover.</p> <ol style="list-style-type: none"> <li>2. The licensee must submit with the exemption application plans prepared by a registered builder or engineer which:                             <ol style="list-style-type: none"> <li>a. illustrate in (a) drawing(s) the construction or maintenance work to be completed, including cross sections</li> <li>b. stipulate the amount of waste, in cubic metres, which will be used to complete the work</li> <li>c. demonstrate how the required volume of waste was calculated</li> <li>d. detail what waste materials are proposed to be used</li> <li>e. show the location where the works are to be carried out.</li> </ol> </li> </ol> <p>In addition to the plans, copies of the registered builder's or engineer's qualifications must also be supplied to the department.</p> <ol style="list-style-type: none"> <li>3. No charge or fee was received by the licensee for the waste accepted.</li> </ol>
<p>Regulation 5(1)(h)</p> <p>Waste used for cover as required by a closure notice</p>	<ol style="list-style-type: none"> <li>1. A closure notice under section 68A(2) of the <i>Environmental Protection Act 1986</i> has been issued to the licensee.</li> <li>2. The proposed works are in accordance with the requirements of the closure notice.</li> </ol>



Exemption	Criteria
	<ol style="list-style-type: none"> <li>3. The amount of waste does not exceed the amount required to cover the landfill site as required by the closure notice.</li> </ol>
<p>Regulation 5(1)(i)</p> <p>Asbestos containing material</p>	<ol style="list-style-type: none"> <li>1. The material meets the definition of 'asbestos containing material' (ACM) in regulation 5(1A) of the WARR Levy Regulations.</li> <li>2. The landfill is able to accept and bury Special Waste Type 1 (asbestos) under its licence and conditions of licence.</li> <li>3. The licensee has demonstrated that the ACM will be buried at the landfill in accordance with the licence.</li> <li>4. The ACM was taken to the landfill in a manner that does not constitute an offence under regulation 44 of the Environment Protection (Controlled Waste) Regulations 2004.</li> </ol>
<p>Regulation 5(2)</p> <p>An exemption from the requirement for Category 64 or 65 licensed landfills to weigh waste on a weighbridge</p>	<ol style="list-style-type: none"> <li>1. The licensee has outlined the circumstances as to why waste will not be weighed on a weighbridge.</li> <li>2. An appropriate plan has been provided to the department that demonstrates the weighbridge will become operational as soon as reasonably practicable, including an estimated timeframe.</li> </ol>
<p>Regulation 5(3)</p> <p>An exemption from the requirement for a Category 63 licensed landfill to conduct a quarterly volumetric survey</p>	<ol style="list-style-type: none"> <li>1. No waste has been disposed of at the licensed landfill during the return period for which the application has been made</li> </ol>



Exemption	Criteria
<p>Regulation 5(3A)</p> <p>Uncontaminated soil or other clean fill which was received at the licensed landfill prior to 4 February 2020 free of charge, to be used after the completion of landfill operations to cover, to a depth of up to 500 mm, waste disposed of on the premises.</p>	<ol style="list-style-type: none"> <li>1. The material meets the definition of 'clean fill' or 'uncontaminated fill' in the <a href="#">Landfill Waste Classification and Waste Definitions 1996</a>.</li> <li>2. The material was received prior to 4 February 2020.</li> <li>3. No charge or fee was received by the licensee for accepting the material.</li> <li>4. The material has been, or will be, used after the completion of landfill operations to cover, to a depth of up to 500 mm, waste disposed of on the premises.</li> <li>5. The licensee has provided calculations to demonstrate how the quantity of required material was determined and has provided a plan showing the location and dimensions of the relevant landfill cells.</li> </ol>



## Glossary

<b>ACM</b>	Asbestos containing material
<b>department</b>	The Department of Water and Environmental Regulation
<b>WARR Act</b>	<i>Waste Avoidance and Resource Recovery Act 2007</i>
<b>WARR Levy Act</b>	<i>Waste Avoidance and Resource Recovery Levy Act 2007</i>
<b>WARR Levy Regulations</b>	Waste Avoidance and Resource Recovery Levy Regulations