

Resource Recovery Exemption under Part 9, Clauses 91 and 92 of the Protection of the Environment Operations (Waste) Regulation 2014

The Downer Bituminous Pavement exemption 2026

Record Number: SRROE-123

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Introduction

This exemption, issued by the Environment Protection Authority (EPA) under clauses 91 and 92 of the Protection of the Environment Operations (Waste) Regulation 2014 (Waste Regulation), exempts a consumer of Downer bituminous pavement from certain requirements in relation to the application of that waste to land, provided the consumer complies with the conditions of this exemption.

This exemption should be read in conjunction with '*the Downer bituminous pavement order 2026*.' This exemption applies to Downer bituminous pavement that is, or is intended to be, applied to land for road making or as a road maintenance material.

1. Waste to which this exemption applies

- 1.1. This exemption applies to Downer bituminous pavement that is, or is intended to be, applied to land for road construction or road maintenance activities.
- 1.2. Downer bituminous pavement means bituminous pavement that contain TonerPlas or Modified Toner Polymer (MTP) and which may also include reclaimed asphalt pavement that meets the requirements of *The reclaimed asphalt pavement order 2014*, recovered glass sand that meets the requirements of *The recovered glass sand order 2014*, and crumb rubber from tyres that meets the requirements of *The recovered tyres order 2014*. Downer bituminous pavement may contain up to 0.75% TonerPlas or up to 0.7% MTP for mixed asphalt pavements, and up to 0.15% MTP in sprayed seal pavements.

2. Persons to whom this exemption applies

- 2.1. This exemption applies to any person who applies, or intends to apply, Downer bituminous pavement to land as set out in clause 1.1.

3. Duration

- 3.1. This exemption commences on the issue date and is valid until 13 April 2028 unless revoked by the EPA in writing at an earlier date.

4. Revocation

- 4.1. 'The Downer bituminous pavement exemption May 2024' which commenced on 5 May 2024 is revoked from 13 April 2026.

5. Premises to which this exemption applies

- 5.1. This exemption applies to the premises at which the consumer's actual or intended application of Downer bituminous pavement is carried out.

6. Exemption

- 6.1. Subject to the conditions of this exemption, the EPA exempts each consumer from the following provisions of the *Protection of the Environment Operations Act 1997* (POEO Act) and the Waste Regulation in relation to the consumer's actual or intended application of Downer bituminous pavement to land when used for road making activities:
- section 48 of the POEO Act in respect of the scheduled activities described in clauses 39 and 42 of Schedule 1 of the POEO Act;
 - Part 4 of the Waste Regulation;
 - section 88 of the POEO Act; and
 - clause 109 and 110 of the Waste Regulation.
- 6.2. The exemption does not apply in circumstances where Downer bituminous pavement is received at the premises for which the consumer holds a licence under the POEO Act that authorises the carrying out of the scheduled activities on the premises under clause 39 'waste disposal (application to land)' or clause 40 'waste disposal (thermal treatment)' of Schedule 1 of the POEO Act.

7. Conditions of exemption

The exemption is subject to the following conditions:

- 7.1. At the time the Downer is received at the premises, the material must meet all requirements for Downer bituminous pavement that are required on or before the supply of Downer bituminous pavement under '*the Downer bituminous pavement order 2026*.'
- 7.2. The Downer bituminous pavement can only be applied to land in road construction and road maintenance activities. This approval permits the laying of bituminous pavement on private land, provided:
- 7.2.1. the Downer bituminous pavement is applied only to the minimum extent necessary for the road construction or road maintenance activity (this may, for example, include driveways, access routes and other such pavements), and
 - 7.2.2. the road provides access (temporary or permanent) to a development approved by a Council, or
 - 7.2.3. the works are either an exempt or complying development, or
 - 7.2.4. a development consent has been granted under the relevant Environmental Planning Instrument (EPI).
- 7.3. The consumer must keep a written record of the following for a period of six years:
- The quantity of any Downer bituminous pavement received; and
 - The name and address of the supplier of the Downer bituminous pavement received.
- 7.4. The consumer must make any records required to be kept under this exemption available to authorised officers of the EPA on request.
- 7.5. The consumer must ensure that any application of Downer bituminous pavement to land must occur within a reasonable period of time after its receipt.

8. Definitions

In this exemption:

application or apply to land means applying to land by:

- spraying, spreading or depositing on the land; or
- ploughing, injecting or mixing into the land; or
- filling, raising, reclaiming or contouring the land.

asphalt means a solid material typically composed of sand, aggregates and similar materials bound together with bituminous and/or other similar binders.

consumer means a person who applies, or intends to apply, Downer bituminous pavement to land.

Modified Toner Polymer (MTP) means a granulated material supplied by Close the Loop Pty Ltd (or its successors or assigns) containing:

- waste toner (post-consumer recycled toner powder), and
- waste oil (medium grade engine oils and greases).

processor means a person who processes, mixes, blends, or otherwise incorporates Tonerplas or MTP into Downer bituminous pavement for supply to a consumer. The processor in this order is Downer EDI Works Pty Ltd (ABN: 66 008 709 608).

Tonerplas means a granulated product produced by Close the Loop Pty Ltd (ABN 79 095 769 752 26) at 6-20 Radford Rd, Reservoir VIC 3073 containing:

- waste toner (post-consumer recycled toner powder),
- waste oil (medium grade engine oils and greases), and
- low-density polyethylene (LDPE) pellets derived from post-consumer and post-industrial soft plastics.

SIGNATURE

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Environment Protection Authority

(by delegation)

Issue date: 13 April 2026

Notes

The EPA may amend or revoke this exemption at any time. It is the responsibility of the consumer to ensure they comply with all relevant requirements of the most current exemption.

In gazetting or otherwise issuing this exemption, the EPA is not in any way endorsing the use of this substance or guaranteeing that the substance will confer benefit.

The conditions set out in this exemption are designed to minimise the risk of potential harm to the environment, human health or agriculture, although neither this exemption nor the accompanying order guarantee that the environment, human health or agriculture will not be harmed.

The consumer should assess whether or not the Downer bituminous pavement is fit for the purpose the material is proposed to be used for, and whether this use will cause harm. The consumer may need to seek expert engineering or technical advice.

Regardless of any exemption provided by the EPA, the person who causes or permits the application of the substance to land must ensure that the action is lawful and consistent with any other legislative requirements including, if applicable, any development consent(s) for managing operations on the site(s).

The receipt of Downer bituminous pavement remains subject to other relevant environmental regulations in the POEO Act and the Waste Regulation. For example, a person who pollutes land (s. 142A) or water (s. 120), or causes air pollution through the emission of odours (s. 126), or does not meet the requirements for asbestos waste (s. 144AAB), regardless of having an exemption, is guilty of an offence and subject to prosecution.

This exemption does not alter the requirements of any other relevant legislation that must be met in utilising this material, including for example, the need to prepare a Safety Data Sheet (SDS).

You may no longer receive the benefit of this exemption if you fail to comply with the conditions of this exemption. Failure to make or keep records in accordance with this exemption constitutes an offence under section 268B of the POEO Act. It is also an offence under section 286C of the POEO Act to fail to give another person information or records where required under this exemption.