

# **EXPLANATORY STATEMENT**

## **Select Legislative Instrument 2011 No. 116**

Issued by the Authority of the Minister for Climate Change and Energy Efficiency

*Renewable Energy (Electricity) Act 2000*

*Renewable Energy (Electricity) Amendment Regulations 2011 (No. 3)*

Section 161 of the *Renewable Energy (Electricity) Act 2000* (the Act) provides, in part, that the Governor-General may make Regulations prescribing matters required or permitted by the Act, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The Act, as amended by the *Renewable Energy (Electricity) Amendment Act 2010* (the Amendment Act) establishes the Renewable Energy Target (RET) scheme to encourage electricity generation from eligible energy sources. The RET is designed to ensure that the equivalent of 20 per cent of Australia's electricity supply is generated from renewable sources by 2020. From 1 January 2011, the RET has operated as two parts - the Large-scale Renewable Energy Target (LRET) and the Small-scale Renewable Energy Scheme (SRES).

Under the Act, wholesale electricity purchasers ('liable entities') are required to contribute to the RET in proportion to their share of the national wholesale electricity market. The Act provides for the creation of renewable energy certificates by renewable energy generators, small generation units (SGUs) and solar water heaters. One certificate generally represents one megawatt-hour (MWh) of electricity from eligible energy sources.

The *Renewable Energy (Electricity) Regulations 2001* (the Principal Regulations) provide an administrative framework to implement the Act in relation to power station accreditation, eligibility requirements for renewable energy sources, eligibility requirements for solar water heaters and SGUs, and calculation methods for determining the number of certificates.

The Regulations amend the Principal Regulations to preserve, under particular contractual and evidentiary circumstances, a certificate multiplier of 4 in determining the number of certificates able to be created for eligible SGUs installed between 1 July 2011 and 30 June 2012. This amendment implements the Government's commitment on 5 May 2011 to put in place transitional arrangements, to cover supply/installation contracts entered into prior to 5 May 2011, around regulatory amendments (made on 16 June 2011) to reduce the certificate multiplier from 4 to 3 for SGU installations from 1 July 2011 to 30 June 2012.

The Regulations also make a minor technical amendment to the Principal Regulations.

Background on the policy intent of the Regulations is included in Attachment A. Details of the Regulations are included in Attachment B.

### **Consultation**

The Regulations implement the transitional arrangements as part of adjustments to the Solar Credits mechanism announced by the Commonwealth Government on 5 May 2011. The Regulations were informed by concerns raised with the Department of Climate Change and Energy Efficiency by a range of stakeholders and by targeted industry consultation undertaken by the Department.

Authority: Section 161 of the  
*Renewable Energy (Electricity)*  
*Act 2000*

**General policy guidance on the transitional arrangements to be made through the Renewable Energy (Electricity) Amendment Regulations 2011 (No. 3)**

On 5 May 2011, the Commonwealth Government announced adjustments to the Solar Credits mechanism under the small-scale component of the Renewable Energy Target (RET) scheme in light of continued strong growth in the industry, the impact of this growth on electricity prices, and the impact of the Solar Credits support on demand for other clean energy technologies such as solar hot water heaters.

The Solar Credits mechanism provides support for those installing small generation units such as small-scale solar panels, wind and hydro electricity systems by multiplying the number of small-scale technology certificates (STCs) that these systems would usually be able to create under the Small-Scale Renewable Energy Scheme (SRES) component of the RET. The level of support in terms of the number of STCs received via the Solar Credits mechanism is determined by the date the system is installed

Solar Credits applies to the first 1.5 kilowatts (kW) of system capacity installed for systems connected to main electricity grids and up to 20 kW of capacity for off-grid systems. As a result of the adjustments made to the Principal Regulations made on 16 June 2011, the additional Solar Credits support under the SRES will be reduced to a multiple of 3 rather than 4. The multipliers in following years will also be reduced by one, thereby bringing forward the phase out of the Solar Credits mechanism by one year to end on 30 June 2013.

As part of the 5 May 2011 announcement, the Government also indicated that where legally binding contracts were made prior to 5 May 2011 for eligible small generation units installed between 1 July 2011 and 30 June 2012, it would put in place transitional arrangements in the Principal Regulations to enable the Solar Credits multiplier of 4 to apply to these installations, under certain conditions.

**Overview of Transitional Arrangements**

The transitional arrangements reflect the Government's policy intent that parties to a legally binding contract, made in good faith prior to 5 May 2011 under which a small generation system is supplied and installed after 30 June 2011 and before 1 July 2012 at a particular address, can avoid being financially disadvantaged by the regulatory amendment to reduce the Solar Credits multiplier from 4 to 3 for systems installed from 1 July 2011.

The transitional arrangements made under the Principal Regulations specify the contractual circumstances and related documentary requirements governing eligibility to create STCs through Solar Credits under the multiplier of 4 for systems installed after 30 June 2011 and before 1 July 2012.

**Eligible contracts**

The Regulations put transitional arrangements in place with the intent eligible contracts for the supply and installation of a small generation unit at a particular address must have been entered into before 5 May 2011 and be legally binding on all parties on and after that date.

The term ‘contract’ has its legal meaning under the transitional arrangements whereby all of the requirements necessary for the formation of a binding contract between two or more parties must be satisfied. Under these specific circumstances this means all parties to the contract had entered into an agreement that includes an offer to supply and install a particular small generation unit at a particular address, and under particular pricing arrangements and acceptance of these terms before 5 May 2011.

As such, the Regulations exclude any contracts which as of 5 May 2011 had not yet become legally binding on the parties. This excludes from eligibility any contracts with a cooling-off period, either statutory or explicitly included in the contract, where the cooling-off period remained in place on 5 May 2011 or later. The Regulations also exclude from eligibility any contracts that include a ‘condition precedent’ (which describes a condition, obligation or event that must come to pass before the contract is considered legally binding), where that enabling condition has not been met before 5 May 2011. Further details on legally binding contract conditions and eligibility are provided in Attachment B.

The transitional arrangements are intended to protect parties to a legally binding contract for the final “retail-level” transaction for the supply and installation of a small generation unit. These parties would generally be a solar panel retailer and a home owner. Consequently the Regulations also specify that any contracts not specifically linked to a particular address or where neither party will own the system once installed will not be eligible under the transitional arrangement. For example contracts between system wholesalers and retail suppliers, or bulk supply contracts with builders or residential developers where system addresses are not specified are not be eligible under the transitional arrangements.

The Regulations also reflect the recognition that a legally binding contract can be formed in writing or orally. These contracts may comprise:

- a single document comprising both offer and acceptance that is signed by both parties and clearly dated, setting out all the terms and conditions;
  - for example, a written contract drawn up by the small generation unit retailer and signed by all relevant parties, which includes the intended owner and address of the installed unit and outlines the unit specifications, price, general terms and conditions and date the contract was made.
- a series of related documents that together comprise offer and acceptance, identifying the parties and setting out all the terms and conditions including relevant contract dates;
  - for example, a chain of written documentation (which could include letters, faxes and/or emails), between all relevant parties, which includes the intended owner of the installed unit, where an offer is made and accepted for the supply and installation of a specific unit at a particular address at an agreed price and related terms.

- an oral agreement which may include a documentary component or be exclusively oral;
  - for example where an offer is made in writing or verbally, and accepted by phone or handshake. In this case it can be reasonably expected that written confirmation recording what the parties have agreed to and when it was agreed, would follow shortly after the agreement is struck;

### **Documentary requirements of eligible contracts**

The person entitled to create certificates under the transitional arrangements in respect of a particular small generation unit installed at a particular address must be able to demonstrate with documentation that the contract in respect to that unit meets the eligibility requirements. The Regulations specify the documentation requirements to be complied with, which depend on whether the contract was in written or oral form before 5 May 2011.

To avoid placing an undue administrative burden on the person creating certificates under the transitional arrangements, the Regulations do not oblige the person to provide the full documentary evidence along with their application to create certificates, but instead oblige the applicant to provide, prior to applying to create the certificates, statutory declarations under the *Statutory Declarations Act 1959* (the Act) including to the effect that they possess the requisite documentation.

Statutory declarations are written statements declared to be true in the presence of an authorised witness. Under the Act, a person who wilfully makes a false statement in a statutory declaration is guilty of a criminal offence equivalent to perjury and is punishable by fines or jail, or both.

Noting that a legally binding contract can be formed in writing or orally, two separate rules around provision of documentary evidence are provided:

#### *The Basic Rule - Contract documentation for a written contract.*

This basic rule applies where the person who is entitled to create certificates under the transitional arrangements possesses documentation demonstrating that a legally binding written contract was entered into before 5 May 2011. This documentation could be:

- a single document that includes both offer and acceptance that is signed and dated by both parties, setting out the terms and conditions of supply including address and expected date of installation as well as pricing arrangements; or
- a series of verifiable related documents (letters, emails, faxes, written forms), all clearly dated prior to 5 May 2011 that together include offer and acceptance, setting out the terms and conditions of supply including address and expected date of installation as well as pricing arrangements.

Before applying for the certificates on the on-line certificate registry administered by the Office of the Renewable Energy Regulator (ORER), the entitled person would need to obtain and provide to the ORER a statutory declaration stating that the person possesses a copy of the legally binding contract or of the series of related documents that together form the legally

binding contract, entered into before 5 May 2011 for a particular small generation unit installed on or after 1 July 2011 and before 1 July 2012.

The Regulations also oblige the entitled person to verify in the statutory declaration that the parties to the contract were legally bound to proceed with the contract on and after 5 May 2011, that if the contract was conditional on any event happening, the event happened before 5 May 2011 and that the owner of the unit was a party to the contract.

To assist the ORER in undertaking any required assessment of the application to create certificates under the transitional arrangements, the Regulations also specify that the entitled person must describe the pieces of contract documentation, set out the following information and certify that the information comes from the contract documentation:

- the date the contract was signed (which must be before 5 May 2011);
- the names, addresses and contact details of the parties to the contract;
- the address at which the unit was installed; and
- the size, make and model of the unit.

Finally, the Regulations also specify that the entitled person's statutory declaration must certify that the person can provide the contract documentation at the request of the Renewable Energy Regulator.

Examples of pieces of verifiable documentation that could contribute to demonstrating compliance are outlined in Attachment B.

In regard to the size, make and model of a small generation unit, there is often some form of component substitution or variation with the actual installed small generation unit due to unforeseen circumstances, including supply and demand constraints.

Acknowledging this fact, it is intended that small variations to components, make and model, and system size would be acceptable as indicating the installed system for which certificates are being applied for is, for the purposes of these transitional arrangements, the system indicated in the agreement.

*The Supplementary Rule – written documentation evidencing the existence of an oral contract.*

In circumstances where the legally binding contract made before 5 May 2011 may be oral, for example where an offer is made in writing or orally and accepted by phone or handshake (with written confirmation usually following some time later), the Regulations reflect a supplementary rule.

In light of the difficulty and administrative expense inherent in demonstrating the existence and particularly the timing of an oral contract, and to address the high risk of false claims, where the agreement is oral the Regulations specify documentation is to clearly demonstrate that the contract existed and that it was made before 5 May 2011.

To allow reasonable time after 5 May 2011 for this confirming documentation to be produced, while addressing the issue of potential false claims following release of draft transitional arrangements for industry consultation, the Regulations stipulate this confirming documentation must have been created, and be clearly dated, no later than 9 June 2011.

Under the Regulations, the person who is entitled to create certificates is required to provide the same statutory declaration under the supplementary rule as that specified under the basic rule.

In addition, for an oral contract, before the entitled person can apply to create certificates under the transitional arrangements, they must also obtain and supply to the Renewable Energy Regulator signed statutory declarations from each party to the contract (one being the owner of the unit after its installation) stating that a legally binding contract was entered into before 5 May 2011. The declarations are to also set out the following:

- the names, addresses and contact details of the parties to the agreement;
- the form and date on which the legally binding contract was entered into;
- the address at which the unit was installed; and
- the size, make and model of the unit.

Where the supplementary rule applies, the Regulations also specify that a statutory declaration under this rule would not be required from a party to the contract where that party is the person applying to create the certificates. This removes the need for the eligible person to sign two statutory declarations that would in effect contain the same information.

Following the submission of the required statutory declaration(s) to the Renewable Energy Regulator under the basic or the supplementary rule, the Regulations would enable the Renewable Energy Regulator to request any other information or documents that it may require to ensure it can verify information provided in the statutory declarations and be satisfied that the application provided by the person entitled to create certificates under the transitional arrangements is valid.

### ***Proposed bundling arrangements***

Acknowledging that the process for creation of certificates is often completed in bundles at one time, for example where a person may be entitled to create certificates for multiple small generation units, only one statutory declaration will be required under the transitional arrangements where the basic rule has been met for all relevant installed units.

Under these circumstances the signed statutory declaration would still clearly identify all installed units relevant to the application to create certificates and include all the required information listed in the Regulations for each unit.

However, where the supplementary rule applies, the relevant statutory declarations will be required from the person entitled to create certificates and all parties to the contract, as outlined above, for each installed unit.

***Existing regulatory powers/requirements around provision and retention of documentation.***

The record-keeping powers under Section 160 of the *Renewable Energy (Electricity) Act 2000*, (the Principal Act) require, inter alia, that a registered person (this would include a person creating certificates under the proposed transitional arrangements) must keep, for at least 5 years after creating or obtaining them, records that record and explain all transactions and other acts engaged in, or required to be engaged in by the record-keeper under the Principal Act.

In addition, Part 11A - Information Gathering Powers - of the Principal Act empowers the Renewable Energy Regulator to obtain information and documents relevant to the operation of the Principal Act.

***Summary of the application of the transitional arrangements***

Evidence of legally binding contract before 5 May 2011	Complies with Transitional Arrangements	Rule	<i>Stat Dec</i> signed by person eligible to create STCs	Additional <i>Stat Decs</i> signed by all parties to the contract
<b>Copy of the written legally binding contract struck before 5 May 2011 that meets the information requirements in the Regulations</b>	Yes	Basic	Yes (stating possession of the contract and setting out/certifying required information)	No
<b>Series of written evidence demonstrating the legally binding written contract existed before 5 May 2011</b>	Yes	Basic	Yes (stating possession of documentation that fully substantiates the contract and setting out/certifying required information)	No
<b>Oral contract in place before 5 May 2011 evidenced by specified documentation</b>	Yes	Supplementary	Yes (stating possession of specified documentation and setting out/certifying required information)	Yes (stating the contract was in place before 5 May 2011 and setting out required information)
Oral contract with no or insufficient written evidence	No	n/a	n/a	n/a

**Details of the Renewable Energy (Electricity) Amendment Regulations 2011 (No. 3)****Regulation 1 – Name of Regulations**

This regulation provides that the title of the Regulations is the *Renewable Energy (Electricity) Amendment Regulations 2011 (No. 3)*.

**Regulation 2 – Commencement**

This regulation provides for the Regulations to commence on 1 July 2011.

**Regulation 3 – Amendment of Renewable Energy (Electricity) Regulations 2001**

This regulation provides for Schedule 1 to the Regulations to amend the *Renewable Energy (Electricity) Regulations 2001*.

**Regulation 4 – Transitional**

The Solar Credits mechanism provides support for those installing small generation units such as small-scale solar panels, wind and hydroelectricity systems by multiplying the number of small-scale technology certificates (STCs) that these systems would usually be able to create under the Small-Scale Renewable Energy Scheme (SRES) component of the Renewable Energy Target (RET) scheme. The level of support in terms of the number of STCs received via Solar Credits mechanism is determined by the date the system is installed

Under regulatory amendments made on 16 June 2011, this additional Solar Credits support under the SRES will be reduced to a multiple of 3 rather than 4 on 1 July 2011. The multipliers in following years will also be reduced by one, thereby bringing forward the phase out of the Solar Credits mechanism by one year to end on 30 June 2013.

The new schedule of multipliers, which determines the additional STCs an eligible small generation unit could create, is outlined in the following table.

*Schedule of Solar Credits Multipliers*

Date installed	9 June 2009 – 30 June 2011	1 July 2011 - 30 June 2012	1 July 2012 - 30 June 2013	From 1 July 2013 onwards
Solar Credits Multiplier	5	3	2	No multiplier (1)

Regulation 4 specifies the transitional arrangements to reflect the Government's policy intent that parties to a legally binding contract, made in good faith prior to 5 May 2011 (the date of the public announcement of the reduction in the STC multiplier) under which a small generation system is supplied and installed after 1 July 2011 and before 1 July 2012 at a particular address, can avoid being financially disadvantaged by the regulatory amendment to reduce the Solar Credits multiplier from 4 to 3 for systems installed in that period.



Regulation 4 stipulates the contractual circumstances and related documentary requirements governing eligibility to create STCs through Solar Credits under a multiplier of 4 for systems installed between 1 July 2011 and 1 July 2012.

Subregulation 4 (1) specifies that the regulatory amendments made to reduce the Solar Credits multiplier from 4 to 3 in the period 1 July 2011 to 30 June 2012 do not apply to installations of small generation units that were installed in that period where legally binding contracts for the installations of those units at particular addresses were in place before 5 May 2011 and where the conditions specified in these Regulations are met.

Paragraphs 4 (1) (a), (b), (c) and (d) together specify that the contract to supply and install a small generation unit, where a party to the contract was the owner of the unit after it was installed, was entered into and legally binding on all parties to the contract before 5 May 2011.

The Regulations exclude any contracts, which as of 5 May 2011 had not yet become legally binding on the parties. This would exclude from eligibility any contracts with a cooling-off period, either statutory or explicitly included in the contract, where the cooling-off period remained in place on or after 5 May 2011. Where “cooling-off arrangements” are not legally binding, that is, not specified in the contract terms and conditions but offered informally between parties to the contract, it is intended that these contracts would be eligible under the Regulations provided they satisfy the other requirements.

The Regulations also exclude from eligibility any contracts that include a ‘condition precedent’ (which describes a condition, obligation or event that must occur before the contract is considered legally binding), where that enabling condition has not been met before 5 May 2011. Such a condition could have the effect that the contract doesn’t legally bind the parties until, for example, formal finance or local planning approval has been obtained.

To be clear, contracts which have not yet become legally binding before 5 May 2011, including for example where a specified cooling period has not expired or where other pre-conditions for the contract coming into force have not yet been met before 5 May 2011, these contracts are not eligible under the transitional arrangements.

However, where legally binding contracts have been entered into before 5 May 2011 and include “conditions subsequent” that is, circumstances under which a party may later withdraw (usually incurring some form of cost - for example if delivery requirements are not able to be met or if permission to connect to the grid is not provided), these contracts would be eligible provided they satisfy the other requirements.

Paragraph 4 (1) (e) specifies the particular matters that must be identified in the contract documentation, namely:

- the date the contract was entered into, which must be before 5 May 2011;
- the identities of each party to the contract, which must include the owner of the unit following its installation as a party to the contract;
- the address at which the unit was installed; and
- the size, make and model of the unit.

Paragraph 4 (1) (f) specifies that the person entitled to create STCs for the installed unit, who typically would either be the owner of the installed unit or another person to whom the unit owner has transferred the right to create the STCs, must meet the specified requirements in subregulation 4 (2) before creating the STCs for the unit.

Subregulation 4 (2) specifies the requirements that must be met by the person entitled to create STCs for the installed unit before creating the certificates to demonstrate that the contract in respect to that unit meets the conditions for eligibility under subregulation 4 (1).

To avoid placing an undue administrative burden on the entitled person to create certificates utilising the transitional arrangements, subregulation 4 (2) does not oblige the entitled person to provide the full documentary evidence along with their applications to create STCs, but instead obliges the entitled person to provide one or more statutory declarations under the *Statutory Declarations Act 1959* (the Act) including to the effect that they possess the requisite documentation.

Statutory declarations are written statements declared to be true in the presence of an authorised witness. Under the Act, a person who wilfully makes a false statement in a statutory declaration is guilty of a criminal offence equivalent to perjury and is punishable by fines or jail, or both.

Paragraph 4 (2) (a) specifies that the person entitled to create STCs for the installed unit must have in their possession the required contract documentation identifying the matters mentioned in paragraph 4 (1) (e). Subregulation 4 (6) specifies what contract documentation means for written and oral contracts.

Paragraph 4 (2) (b) specifies that the person entitled to create STCs for the installed unit must provide the Regulator with a statutory declaration:

- describing the contract documentation, for example by listing and briefly outlining the nature of each document demonstrating the eligibility of the contract;
- confirming that they can provide this documentation if requested by the Renewable Energy Regulator;
- verifying that the parties to the contract were legally bound to proceed with the contract on and after 5 May 2011;

- verifying that if commencement of the contract was conditional on any event happening, the event happened before 5 May 2011; and
- verifying that the owner of the unit after it was installed was a party to the contract.

Subparagraph 4 (2) (b) (iv) and (v) together assist the Renewable Energy Regulator undertake any required assessment of the application to create certificates under the Regulations, by obligating the entitled person to set out the contract documentation information specified in paragraph 4 (1) (e) and certify that the information included in the statutory declaration comes from that contract documentation.

In regard to subparagraph 4 (1) (e) (iv) which refers to the size, make and model of a small generation unit identified in the contract documentation, there is often some form of component substitution or variation with the actual installed small generation unit due to unforeseen circumstances, including supply and demand constraints. It is intended that small variations to components, make and model, and system size would be acceptable as indicating the installed system for which certificates are being applied for is, for the purposes of these transitional arrangements, the system indicated in the contract.

Paragraph 4 (2) (c) specifies that in circumstances where the contract is an oral contract the person entitled to create STCs for the installed unit must obtain and supply to the Renewable Energy Regulator signed statutory declarations from each party to the contract (one being the owner of the unit after its installation) verifying that a legally binding contract was entered into before 5 May 2011 by setting out and certify the same matters as outlined in paragraph 4 (1) (e).

Paragraph 4 (2) (d) enables the Renewable Energy Regulator to request any other information or documentation in order to satisfy itself that an eligible legally binding contract that meets the conditions outlined in subregulation 4 (1) was in place prior to registering STCs for an installed small generation unit under the Regulations.

Subregulations 4 (3) and 4 (4) enables the entitled person who has the right to create STCs for more than one small generation unit installed under one or more written contracts to provide one statutory declaration under paragraph 4 (2) (b) encompassing all relevant units.

Under these circumstances the signed statutory declaration would still clearly identify all installed units relevant to the application to create certificates as well as include all the required information listed in paragraph 4 (2) (b) for each unit.

However, where small generation units have been installed on the basis of oral contracts, separate relevant statutory declarations will be required from the entitled person as outlined in paragraph 4 (2) (b), for each installed unit.

Subregulation 4 (5) specifies that where the entitled person to create STCs is also a party to an oral contract, they will not have to sign a second similar statutory declaration under paragraph 4 (2) (c) as the required information is to be provided through the entitled person providing a statutory declaration under paragraph 4 (2) (b).

Subregulation 4 (6) specifies the meaning of the term ‘contract documentation’ in relation to written and oral contracts for the purpose of the Regulations.

For written contracts, contract documentation consists of written documents that set out the terms and conditions of the contract and evidencing the offer and acceptance of those terms and conditions before 5 May 2011.

Typically this would comprise a single written document such as a contract drawn up by the small generation unit retailer and signed by all relevant parties, which includes the intended owner and address of the installed unit, outlines the unit specifications, price, general terms and conditions and date the contract was made. However, contract documentation could also consist of a series of verifiable related documents (letters, emails, faxes, written forms), all clearly dated prior to 5 May 2011 that together include an offer and acceptance, setting out the terms and conditions of supply including address and expected date of installation as well as pricing arrangements.

Examples of pieces of verifiable documentation that could contribute to demonstrating the existence of a legally binding contract in place before 5 May 2011 include:

- a written quote, including terms and conditions, for a particular system to be installed at a particular address before 5 May 2011;
- written proof that a monetary deposit was paid (e.g. bank debit/credit note, credit card debit or cheque clearance document) before 5 May 2011;
- sale confirmation documentation dated before 5 May 2011;
- applications dated before 5 May 2011 to relevant retail/distribution service providers seeking to connect a particular system to the grid at a particular address; or
- other time-stamped communications (which may be letters, emails, faxes, quotes and confirming orders, dated before 5 May 2011) between the unit supplier and owner of the installed unit confirming the agreement, price and address to install the unit.

For oral contracts, the term contract documentation means written documentation that was created and clearly dated before 10 June 2011, evidencing the existence of the legally binding contract before 5 May 2011. This documentation, which would typically be a document from the supplier to the purchaser confirming details of the agreement, is to clearly identify include as a minimum the following information:

- the date the contracted was entered into, which must be before 5 May 2011;
- the identities of each party to the contract, which must include the owner of the unit following its installation as a party to the contract;
- the address at which the unit was installed; and
- the size, make and model of the unit.

The pre-10 June 2011 cut-off date is set to allow reasonable time after 5 May 2011 for this confirming documentation to be produced, while addressing the issue of potential false claims following release of the draft transitional arrangements for industry consultation.

### **Schedule 1 – Amendments**

#### **Items 1 and 2 – Subregulations 22ZA (1) and (2)**

Items 1 and 2 together insert subregulation 22ZA (3), which specifies that when a liable entity's partial exemption calculated for a year in accordance with subregulation 22ZA (1) is a negative amount, the entity's partial exemption for the year is zero.

The purpose of the amendment is to reflect the policy intent that a partial exemption certificate is not intended to penalise the liable entity to whom it relates. For practical purposes where the calculation methodology yields a negative amount of partial exemption for a particular liable entity, year, site and eligible emissions-intensive trade-exposed activity, the amount appearing on the associated partial exemption certificate is to be zero, rather than the negative number which would imply a penalty.