

## **EXPLANATORY STATEMENT**

Issued by Authority of the Minister for Agriculture

*Horticulture Marketing and Research and Development Services Act 2000*

*Horticulture Marketing and Research and Development Services (Transfer of Industry Assets and Liabilities) Declaration 2014*

Section 11 of the *Horticulture Marketing and Research and Development Services Act 2000* (the Horticulture Act), provides for the Minister to make a declaration for the industry assets and liabilities of a body that was previously an industry services or industry export control body be transferred (under regulations) to a body that the Minister has declared (or proposes to declare) to be the next industry services body under Section 9 or, in the case of statutory records of the previous body, the Commonwealth.

### **Purpose**

The purpose of the declaration is to declare that the industry assets and liabilities from Horticulture Australia Limited (HAL) are to transfer to a new industry services body on 4 November 2014 in accordance with section 11 of the Horticulture Act.

### **Background**

HAL was formed in 2001 and was the declared industry services body and export control body under Section 9 of the Horticulture Act. As the declared industry services body and/or export control body, HAL is a company limited by guarantee under the Corporations Law.

HAL's purpose was to make research and development and marketing investment decisions, in partnership with industry, which build the value of Australian horticulture and maximise benefits to levy payers, members, government and the Australian public. HAL's funding was derived from a combination of statutory industry levies (from growers for research and development and marketing), Commonwealth matching funds for eligible research and development activities, voluntary contributions (from grower associations, commercial enterprises, researchers and individuals), and other sources such as royalties and investments.

An independent performance review of HAL was finalised in May 2014 and recommended significant change to the industry services delivery model for horticulture, including the establishment of a new company to be declared as the industry services body.

### **Impact and Effect**

The declaration will minimise the disruption of industry services to the horticulture industry by allowing current industry assets and liabilities to be transferred to a new industry services body once HAL has ceased to be the declared industry services body.

### **Consultation**

The need to declare a new industry services body resulted from recommendations arising from an independent performance review conducted as part of HAL's funding agreement with the Commonwealth. The review involved an extensive program of stakeholder consultation, including targeted meetings, public forums in 11 locations around Australia, an on-line survey and the receipt of 52 submissions.

The review was finalised and the findings publicly released in May 2014. The review found that conflicts of interest are constitutionally and operationally embedded in HAL, creating flaws in its governance, planning and performance. It made nine recommendations, the most important of which was that a new grower levy-payer horticulture industry owned company be formed to replace HAL, which is currently owned by horticulture industry representative bodies. HAL's members supported this recommendation at an Extraordinary General Meeting in June 2014. At the meeting, members voted overwhelmingly to support the transition to a new company and empowered the HAL Board to do all things reasonable to facilitate this transition.

The Office of Best Practice Regulation was consulted in the preparation of the associated regulation (*Horticulture Marketing and Research and Development Services (Transfer of Industry Assets and Liabilities) Regulation 2014*) that operates in conjunction with this declaration (ID 16955).

### **Details of the Declaration**

Details of the declaration are set out in [Attachment A](#).

The declaration is compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in [Attachment B](#).

The declaration is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

**Details of the *Horticulture Marketing and Research and Development Services (Transfer of Industry Assets and Liabilities) Declaration 2014***

Section 1 – Name of Declaration

This section provides for the title of the declaration to be the *Horticulture Marketing and Research and Development Services (Transfer of Industry Assets and Liabilities) Declaration 2014*

Section 2 – Commencement

This section provides for the declaration to commence on the day that it is made.

Section 3 – Authority

This section provides for the *Horticulture Marketing and Research and Development Services Act 2000* to be the authority for making this declaration.

Section 4 – Definitions

This section provides for definitions of terms used in the declaration. Notes are provided on each definition below:

***Act***

This definition means the *Horticulture Marketing and Research and Development Services Act 2000*.

***Horticulture Australia Limited*** (ABN 19 095 566 108) means the body that was the industry services body and the industry export control body under the Act immediately before 4 November 2014.

***next industry services body*** means the body that the Minister has declared, or proposes to declare, under section 9 of the Act, to be the next industry services body after Horticulture Australia Limited ceases to be the industry services body under the Act.

Note: See paragraph 11(1)(a) of the Act.

Section 5 – Transfer of industry assets and liabilities of Horticulture Australia Limited

Section 5 subsection (1) provides for the declaration to specify that the industry assets and liabilities in relation to Horticulture Australia Limited immediately before 4 November 2014 are to be transferred in accordance with the *Horticulture Marketing and Research and Development Services (Transfer of Industry Assets and Liabilities) Regulation 2014*.

Section 5 subsection (2) declares that the industry assets and liabilities (other than statutory records) in relation to Horticulture Australia Limited are to be transferred to the next industry services body.

Section 5 subsection (3) declares that the statutory records of Horticulture Australia Limited are to be transferred to the Commonwealth.

Section 5 subsection (4) declares that the day on which the industry assets and liabilities and statutory records are to transfer is 4 November 2014.

## **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### **Horticulture Marketing and Research and Development Services (Transfer of Industry Assets and Liabilities) Declaration 2014**

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Legislative Instrument**

The purpose of the declaration is to declare that the industry assets and liabilities from Horticulture Australia Limited are to transfer to a new industry services body in accordance with section 11 *Horticulture Marketing and Research and Development Services Act 2000*.

#### **Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

#### **Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**The Hon. Barnaby Joyce MP  
Minister for Agriculture**