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To Whom It May Concern:

Explanatory Statement re: Instrument approving the form of a certificate of grant of Plant Breeder's Right (Instrument Approving Forms No. 1 of 2005) (the instrument) under the Plant Breeder's Rights Act 1994 (the PBR Act).

Rule-maker : This Explanatory Statement is prepared by Nikolas Barrie Hulse, acting Registrar of Plant Breeder's Rights (PBR), IP Australia, being the rule-maker, for the purposes of the *Legislative Instruments Act 2003*.

Purpose and Operation of Instrument: The purpose of the instrument is to approve a form for a PBR grant certificate for the purpose of granting PBR to applicants under s 44 of the PBR Act. Grant of PBR is central to the operation of the PBR scheme in Australia.

The form is usually filled out by the Registrar of PBR, not a member of the general public, in order to grant an intellectual property right.

The PBR Act stipulates that certificates must be in an 'approved form'. The instrument approving forms, with reference to section 7 of the PBR Act, is a legislative instrument as defined by the *Legislative Instruments Act 2003*.

Documents incorporated by reference: Not applicable.

Consultation: The Plant Breeder's Rights Advisory Committee, at their 35th meeting on 11 May 2005, were presented with the new certificate form. No adverse comments were received.

The Administrative Arrangements Order (AAO) sets out which Ministers are responsible for all Acts of the Australian Parliament. Under the AAO of 23 October 2004 responsibility for the PBR Act was transferred to the Minister for the Department of Industry, Tourism and Resources (DITR) from Minister for Department of Agriculture, Fisheries and Forestry (DAFF). No further consultation on the new certificate form was undertaken because the need to alter the certificate was compelled by the transfer of the Office under the AAO and no significant changes were made to the form of the old certificate.

The instrument is of machinery nature only and does not change the law.

Retrospectivity: The instrument does not have retrospective effect. The instrument commences on registration, as per section 12(1)(d) of the *Legislative Instruments Act 2003*.

NIKOLAS BARRIE HULSE
Acting Registrar of Plant Breeder's Rights
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