



Genetically Modified Crops and Farmer Liability

Genetically modified (GM) crops in Australia

In Australia, regulation of all activities with genetically modified organisms including GM crops is controlled by the Australian *Gene Technology Act 2000*.

This Act established the Australian Office of the Gene Technology Regulator (OGTR) to 'protect the health and safety of people, and the environment, by identifying risks posed by or as a result of gene technology, and by managing those risks through regulating certain dealings with genetically modified organisms (GMOs)'.

Only GM crops which are safe for human health and the environment are approved by the OGTR for release in Australia. The OGTR has approved the commercial release of four types of GM carnations, eight types of GM cotton and two types of GM canola.

In 2008, the first commercial crops of GM canola were planted in New South Wales and Victoria. In Western Australia, Agriculture and Food Minister Terry Redman announced there would be limited commercial size trials of GM Roundup Ready® canola in 2009. The Department of Agriculture and Food will oversee the approval, auditing and monitoring of the trials which will be carried out under stringent safeguards and protocols.

Farmer liability and GM crops

Legal liability is a GM crop related issue which was considered in 2005-06 during the review of the Commonwealth *Gene Technology Act 2000*. The analysis of GM crop-related legal liability in Australia and other countries found that common law allows for effective remedies for persons alleging damage from GM crops.

The information below on farmer liability and GM crops is intended to provide information and not legal advice.

Negligence

Liability for GM crop-related issues may occur if there is damage to another party. For example, if GM seed spreads from a GM farmer to a non-GM farmer, the GM farmer may face negligence actions if all of the following conditions are met:

- The GM farmer has failed to observe duty of care to manage his/her GM farming activities to avoid reasonably avoidable damage to the non-GM farmer
- There has been a breach of duty by the GM farmer
- The breach of duty has led to damage to another party.



Farmers growing GM crops have a duty of care to manage their crops to minimise impacts on others. A breach of duty could result from failing to adhere to 'good practice' in GM crop cultivation (such as keeping buffer zones between GM crops and plantings of non-GM neighbours). GM farmers should be careful to comply with, and carefully document compliance with, any licence conditions associated with their GM crops.

Private nuisance

Tort law is the body of law related to civil wrongs (as distinguished from the law of contract or the criminal law). Among other things, the law of torts protects the use and enjoyment of property. For GM crops, the tort of private nuisance may be relevant because the spread of GM seed or pollen to a non-GM neighbour could compromise the neighbour's non-GM or organic status. If a court decides the spread of pollen or seed prevents the neighbour's use and enjoyment of their property the GM farmer may be liable for loss of profits and clean up of the neighbour's property.

The main farming activities in an area will be important in the determination of whether a nuisance action is likely to succeed. If there is a number of GM farmers, GM cropping may be classified as reasonable use of the land and make it harder for non-GM farmers to successfully sue GM farmers for nuisance.

Trespass to land

Trespass to land involves the direct interference with the possession of another's land. A GM farmer may be liable under trespass if he/she continues to harvest a GM crop where it is obvious the GM material is going onto a neighbour's land.

Intellectual Property (IP) rights

Many GM crops and other crops are patented and, as such, may only be used under licence of the patent owner - this being Monsanto in the case of all Roundup Ready[®] crops. While it is not in the patent owners' interests to seek damages for accidental use - as might arise from pollen drift or a minor seed spill - a patent owner would be likely to pursue those who intentionally seek to make unlicensed use of their technology.

In the widely quoted Canadian case of *Schmeiser versus Monsanto (2000)*, Mr Schmeiser was found guilty of patent infringement for Roundup Ready[®] canola growing on his land as he had taken active steps to cultivate Roundup Ready[®] canola. Similarly, the case of *Parr vs Monsanto (2008)* found against Mr Parr - a seed cleaner in south-east USA - on the basis that he intentionally misled growers into believing that they were able to retain Roundup Ready[®] soybean seed (not canola) for replanting on their own farms.

Distribution and sale

A farmer may choose to sell his/her grain with the claim that it is GM-free. If this undertaking is in the form of a condition of warranty, the farmer may be liable for breach of contract if it is later discovered the crop contains traces of GM products.



As of 1 August 2008 Grain Trade Australia (formerly the Australian National Agricultural Commodities Association) adopted two standards for canola:

- Non-GM canola standard (CSO-1a) which must contain less than 0.9 per cent GM-approved material
- Canola standard (CSO-1) which may or may not contain any level of GM-approved material.



As Commonwealth and State legislation prohibits misleading and deceptive conduct in trade and commerce, non-GM farmers must be careful their claims to the GM status of their crops are accurate.



Talk to your neighbours

At present the only GM crops that may be grown in Western Australia are GM cotton in the Ord River Irrigation Area and limited GM canola in 2009. If the area sown to GM crops in WA increases in coming years the best way forward for both the non-GM and the GM industries is for farmers to discuss the issues with their neighbours and come to mutually agreeable solutions.

For more information refer to the following websites:

- The Department of Agriculture and Food: www.agric.wa.gov.au/
- The Australian Centre for Intellectual Property in Agriculture: www.acipa.edu.au
- Grain Trade Australia: <http://www.nacma.com.au/>

For further information visit the Department of Agriculture and Food's website www.agric.wa.gov.au or for specific enquiries please email gmcrops@agric.wa.com.au

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For further information visit www.agric.wa.gov.au