



Thinking of growing GM crops?

Little information exists for farmers on the potential liability they face if they move to genetically modified (GM) cropping. What is available is at best quite preliminary because few precedents have been set dealing with the liability of GM farmers to their neighbours.

While there is no guarantee that growing GM crops will ever be liability-free, farmers should consider implementing a risk-prevention strategy to minimise potential of legal action.

This fact sheet deals with the steps farmers should take to reduce the risks. Most states and territories have imposed moratoria that prevent the commercial planting of most GM crops. Please note, this fact sheet is not intended to be definitive legal advice on this issue.

Planting and harvesting

Farmers growing GM crops are at greatest risk at planting and harvest. If GM seed or pollen spreads to an adjoining or nearby GM-free property, there is the chance that farm may lose its GM-free classification or be adversely affected in other ways.

Taking care

GM farmers may face a negligence action if seed or pollen from their property causes loss to another farmer. However, an action cannot succeed unless it can be proved that the GM farmer did not act carefully. Before a legal risk can arise, it must be shown that the damage was reasonably foreseeable

and that the GM farmer responded inadequately to reduce or eliminate the risk.

The GM farmer may reduce the risk of being sued for negligence by:

- locating GM crops to minimise the potential for seed or pollen drift to neighbouring properties
- understanding the different characteristics of the GM crop in question and the varying levels of risk (some GM crops cross pollinate more easily with non-GM varieties and the distance over which cross-pollination or seed spread can occur also varies)
- be fully informed – either by contact with seed growers or distributors – on these characteristics.

By reducing these risks, it will be harder to argue that seed or pollen drift could have been reasonably foreseeable or that the GM farmer was careless in the choice of crop location. A GM farmer might also consider:

- setting pollen traps or growing non-GM products on boundaries with non-GM properties
- taking steps to prevent the spread of seed, GM material material and pollen
- segregating the GM crop during harvest
- seeking advice from either grower organisations or government departments on 'best practice' methods of preventing the spread of seed and pollen.

Private nuisance

A GM farmer could face private nuisance action for interfering with the right of other landowners to ordinary use and enjoyment of their property.

Farmers can also minimise the risk of being sued on the grounds of private nuisance by:

- Considering carefully what nearby farmers are doing. If there are other GM farmers in the area, growing GM crops may be classified as a 'reasonable use' of the land and this may make it harder for an adjoining non-GM farmer to successfully sue any GM farmers in the area.

Growing GM crops – legislative requirements

The *Gene Technology Act 2000* (Cth) and equivalent state legislation requires the Gene Technology Regulator to assess environmental and health risks. If the regulator assesses the GM crop as safe, the regulator will license the release of the crop.

Licences may be subject to certain conditions. Failure to comply with licence conditions is likely to be treated as strong evidence of possible negligence leaving the grower open to claims from neighbours – if the neighbour(s) show they have suffered damage.

Full compliance with licence conditions does not mean that a GM farmer could never be successfully sued for nuisance or negligence. Nevertheless, evidence that a GM farmer has complied with licence conditions may be treated as evidence that the GM farmer has exercised reasonable care in growing the crop. It is, therefore, important to maintain records to demonstrate compliance with licence conditions.

Checklist

1. Read any instructions supplied with GM seeds and comply with advice on reducing seed or pollen drift.
2. Plant GM crops in locations most likely to minimise seed or pollen drift.
3. Implement other commonsense measures to prevent seed or pollen spread e.g., buffer plantings around GM crops.
4. Ensure compliance with conditions of any licence issued under the Gene Technology Act or state and territory GM cropping moratorium.
5. Document all on-farm procedures to ensure a complete record of compliance and care.

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