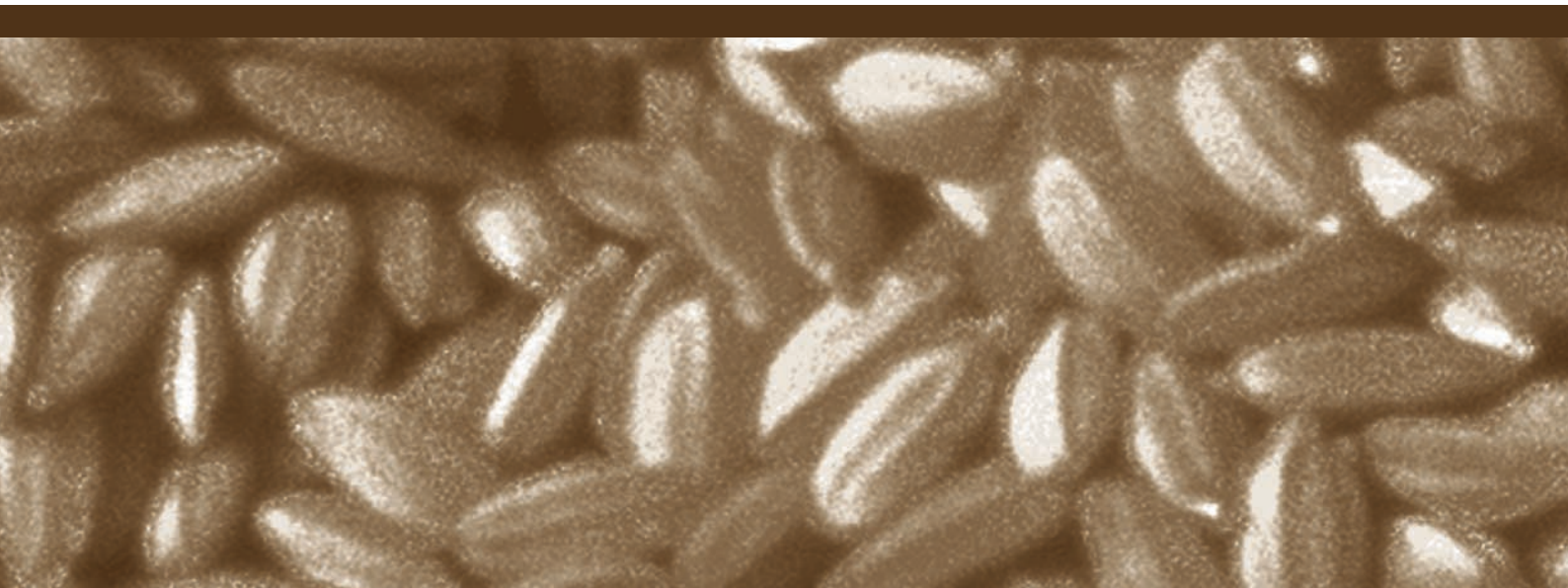




Australian Government
**Department of Agriculture,
Fisheries and Forestry**



A farmer's choice?

Legal liability of farmers growing crops

A Research Paper prepared for the Department of Agriculture, Fisheries and Forestry by the Australian Centre for Intellectual Property in Agriculture

Mark Lunney Robert Burrell

A. Executive Summary

- A.1** The purpose of the paper is to analyse the private law liability of farmers growing crops. The approach taken in this paper is a legal approach. The liability of a farmer growing crops has been considered in light of the potential legal actions that might be brought against such a farmer. In particular, the paper has concentrated on the legal liability of farmers growing crops to adjoining landowners in respect of the damage to property and economic losses that may be caused to the adjoining landowner. This is the liability to which a farmer growing crops is most likely to be exposed. The legal basis for this liability will generally lie in the law of tort and the paper considers in detail the torts of negligence and private nuisance, the torts which are most likely to be used to sue a farmer growing a crop.
- A.2** Section 2 of the paper considers the importance of the characterisation of the damage which a plaintiff suffers in determining liability in both negligence and private nuisance. Section 3 of the paper deals with the notion of ‘risk’ in the context of actions for negligence and private nuisance. Section 4 of the paper considers the potential liability of a grower of a crop in the tort of private nuisance. Section 5 of the paper evaluates the potential liability of a farmer where a crop is present on his land which he did not plant, either through being planted by a previous owner or having self-sown. Section 6 considers the regulatory structures applicable to crops and the effect such structures may have on liability. Section 7 outlines briefly the possibilities for using environmental legislation to establish liability against a farmer growing a crop. Section 8 of the paper considers briefly the potential liability of a farmer growing crops in the tort of trespass to land, whilst Section 9 details the potential difficulties involved in proving causation in all of the torts considered. Section 10 of the paper provides a summary of the liability of a farmer planting a crop to a neighbour in a number of other jurisdictions.
- A.3** The conclusions of this paper are that, under the existing law of negligence and private nuisance, the chances of a successful action against a farmer growing a crop by a neighbour in most cases are small. This conclusion is premised on the fact that in the torts considered the conduct of the plaintiff is judged at the time of the conduct – here, at the time of the planting of the crop – and risk and damage is assessed at that time. A farmer is not liable merely because the consequences of planting the crop turn out to be different from what was predicted at the time the crop was planted. Much depends on the existing scientific evidence, but certainly where a new crop has gone through an existing regulatory approval process – as for GM crops – the farmer planting the crop has strong arguments to defeat claims brought in negligence and private nuisance. This conclusion is reinforced by the failure to discover any reported cases where such actions have been brought, although this might be explained by the fact that many of the innovations behind new crops are relatively recent.

The Australian Government does not necessarily endorse the views expressed in this report. No person should act on the basis of the views contained in this report without first obtaining specific professional advice. The Australian Government does not guarantee and accepts no legal liability whatsoever arising from or connected to the accuracy, reliability, currency or completeness of any material or views contained in this report.