

**Senate Standing Committee on Economics**  
**ANSWERS TO QUESTIONS ON NOTICE**  
Innovation, Industry, Science and Research Portfolio  
Supplementary Budget Estimates Hearing  
19 October 2011

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**AGENCY/DEPARTMENT:** COMMONWEALTH SCIENTIFIC AND INDUSTRIAL RESEARCH ORGANISATION

**TOPIC:** CSIRO PLANT INDUSTRY

**REFERENCE:** Question on Notice (Hansard, 19 October 2011, Page Number 10)

**QUESTION No.:** SI-11

**Senator XENOPHON:** Finally, how is potential liability handled for genetically modified crops?

**Mr Whelan:** CSIRO has standard provisions in all of its contracts with respect to indemnities in warranties for that. To the best of my knowledge there are no specific different requirements for the work we do in GM versus any other form of research. They are standard provisions. I would be happy to provide you with those on notice.

**Senator XENOPHON:** Sure. I think it would be best if I put the rest of the questions on notice. Otherwise it will not be so productive.

**ANSWER**

CSIRO's general approach to technology transfer is that its technology transfer partners assume responsibility for the risks inherent in taking CSIRO technologies that have been developed in the lab or in controlled trials to market. That is, CSIRO requires its technology transfer partners to assume all product liability risks and comply with all regulatory and legal requirements. This approach is consistent with that taken by all publicly funded research organisations that are engaged in technology transfer. CSIRO's legal liability is therefore contractually limited to those losses flowing from actions or omissions over which CSIRO has some degree of control, such actions or omissions would include work that CSIRO has undertaken in the laboratory or the field, compliance with regulatory requirements which CSIRO has responsibility for and representations CSIRO makes to its technology transfer partners.

Below are some sample clauses that CSIRO would typically include in research and technology transfer contracts (including for GM projects). The clauses use various defined terms whose definitions have not been reproduced below to avoid additional complexity.

**Sample clauses – typical for R&D phase:**

Example 1

**Research Stewardship Standards**

The parties shall comply with the principles for research set out in the Research Stewardship Standards. Each party agrees to be audited for compliance by an independent party nominated by the Management Committee. Each party will use reasonable efforts to implement any recommendations from such audit findings.

## Example 2

### 4.1 **Handling and use of Material**

When Handling the Material, the Handling Party must ensure that its Personnel, at all times comply with:

- (a) the Stewardship Standards;
- (b) any laws and Local Regulations applicable to the Handling of the Material;
- (c) any requirements relating to the Handling of the Material specified in Schedule 2; and
- (d) any directions or other requirements with respect to the Handling of the Material notified.

by CSIRO from time to time, including any request by CSIRO to destroy the Material or to deliver the Material to CSIRO or a person nominated by CSIRO.

### 4.2 **Authorisations and licences**

The Handling Party must ensure that it and its Personnel (and require Third Party Recipients and their Personnel) hold at all times during the term of this Deed all licences, consents, permissions and authorisations (however named), required under the laws and Local Regulations, or by any Government Agency, for the Handling of the Material.

## **Sample clauses - typical terms in a commercial licence:**

## Example 3

### 8 **Standards**

#### 8.1 **Compliance with Laws and technical standards**

The Licensee must comply with any applicable Laws and industry standards relating to the Exploitation of the Technology and development and marketing of Products in any jurisdiction in the Territory in which it conducts those activities or in which any Product is to be released.

#### 8.2 **Products to be safe**

The Licensee must take all reasonable steps to ensure that all Products are safe for their intended use.

#### 8.3 **Regulatory approvals**

The Licensee must seek and obtain approval from all relevant regulatory authorities in all relevant jurisdictions in which any Product is to be released.

#### 8.4 **Compliance is Licensee's responsibility**

To the extent permitted by law, CSIRO excludes all liability for any defect, damage, loss, death or injury caused by any Product as a result of the Licensee's compliance with any technical standards or regulatory requirements.

## 12.1 **Release and Indemnity**

The Licensee releases CSIRO from and indemnifies CSIRO against all losses, damages, costs and expenses (including legal costs on a solicitor and own client basis) that CSIRO may sustain or incur as a result of any claim, demand, action or proceeding by any third party [arising out of the exercise by the Licensee of its rights under this Agreement].

## 12.2 **Exceptions**

The release and indemnity in clause 12.1 does not apply to the extent that the indemnified liability is caused by:

- (a) the negligence of CSIRO; or
- (b) a material breach by CSIRO of [an express warranty given under] this Agreement.