

# THE LAND

'We just watch as our land degenerates and degenerates'



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North-West NSW has been at the centre of many illegal clearing prosecutions even though farmers are trying to stem the march of invasive species and weeds. Photos courtesy of Moree Champion.

It's a huge turnaround but the devil will be in the detail, says a northern NSW farmer about the new native vegetation directive from the NSW Government that could see hundreds of native veg prosecutions dropped.

The ongoing cost of remediation orders is a burden for many farmers who have seen up to 1000ha of their land locked up for up to 25 years after prosecutions over illegal clearing under the old 2003 Native Vegetation Act.

The prosecutions have split families, loaded extra stress during the drought, seen their land valuations fall, and brought on the feeling of guilt that they have failed previous generations working the same property.

In some cases, the land will not be able to be worked again for another generation, meanwhile they just have to watch as productive land degenerates, unable to tilth the locked-up soil, and only use spot spraying or chipping - it's almost like a community order as well.

In many instances the prosecutions were only for cleaning up their properties to get rid of weeds such as soil-destroying lipia in floodplain areas and wild turnip, that have had devastating effects on the northern landscape. But the onus of proof was always on the farmer, and the old vegetation code they say didn't distinguish between land in Mullumbimby and land in Mungindi.

It's left a terrible burning feeling in many farmers stomachs who have been penalised, twice, once with a huge fine and then a land lock-up. The affected farmers now meet in what is the Northern

Alliance to discuss their issues, a meeting that often turns into a counselling session.

One of the farmers who has had land locked up spoke to The Land about the situation and the new laws or "government directive" that may see about 164 cases reviewed and at least another 100 on the books possibly not pursued.

They are all over the moon that remediation orders are out the door, but wonder if so-called new set-asides will be just another type of remediation order. The new review means that any clearing case from the old 2003 laws that would have legal under the new 2017 legislation, will be "triaged" through committees.

The farmer said he was happy that the new Agriculture Minister Adam Marshall had pursued the issue and also engaged his new colleague Environment Minister Matt Kean in the process, as the previous Environment Minister Gabrielle Upton was "not interested".

"We've moved forward, the new system should help redress the situation of remediation orders, but we still don't know how this will physically play out, the proof will be in the pudding. Most of us who have been through this are extremely private people, we just want to move on. I've been through it, it's stressful. It takes its toll on everybody. I mean we get told by OEH that things are "black and white", but it's not, with vegetation its 50 different shades of grey. Many people prosecuted just didn't know (they were doing something wrong). They have been trying to deal with an ever changing climate."

The farmer said if you looked at a lot of the prosecutions they involved floodplain areas where farmers were trying to clear their land of weeds such as lipia that degrade the soil.

"The only way to control lipia is to grade it out and try and get the toxins out of the soil. Then you have to repasture. That's the only way to do it."

For doing that the farmer has now seen a large area locked up for 25 years and although he has to report to the OEHL on it, he is only seeing it degenerate, as he is unable to control weeds by tilthing.

He said the laws were outdated for the northern landscape of NSW, where many of the cases are being pursued, landholders dealing with both exotic and native weeds. "Noxious weeds are like a cancer they move up on you slowly and you have to do more to stay on top of them. That locked up land will just eventually creep backwards and backwards."

"The biggest hit to most people is that the bank's valuation for that locked-up land is recalculated to just nil. It's good that the government had identified that remediation orders don't work, but we are worried under the new directive that set-asides may be two of the same. The detail is what farmers want, to see how this plays out."

The whole 2003 Native Vegetation Act had given farmers a bad name they didn't deserve. "Almost all farmers I know are passionate about their job and they absolutely love their country, No one is converting it and selling it. They are just trying to make their country better. Many are working on land that has been in the

same family for four or five generations. The stress I've seen on people is immense and many have been referred to specialists. We need to get to a system that recognises local solutions and local vegetation issues. The new system is good but it needs a bit of tweaking."

Moree solicitor Brendan Moylan has been at the coalface of farmers facing prosecutions for illegal clearing and he acknowledges it's the type of legal work that wears you down.

He's seen farmers taken to the brink, many of them high-standing members of the community who have never been in trouble before, suddenly dragged through the courts, the law putting the onus on them to prove their innocence over clearing, and eventually the government obtaining legal costs.

His firm, Webb and Boland, have represented over 70 clients, many farmers who weren't aware they might be doing something illegal by clearing parts of their property. His clients spread in an arc from north of Moree to Walgett, to Wee Waa, Burren Junction, Coonamble and Collarenebri, all caught in the net of the 2003 Native Vegetation Act - a beast, some say, still alive and kicking despite it being over-ridden by a 2017 code.

Mr Moylan said the old act simply did not take into consideration that large areas of the North-West were not developed for farming until later in the last century, some of it undeveloped until the mid-1990s. It also didn't take into account how native vegetation can be invasive, such as coolibah.



The cases often start with a letter from the Office of Environment and Heritage (OEH) with a "please explain". "Many landholders are reluctant to engage and then they find people on their property. That's what troubles me, the trampling of common law rights. This next process of investigation could take another 18 months."



Moree solicitor Brendan Moylan has scores of clients who have faced or are facing prosecution under the old 2003 Native Vegetation Act.

It might be another two years before any prosecution is launched, and if there is a guilty finding, the farmer has to pay a fine, and the Government's legal costs, that can run over \$50,000.

"I'd say 99 per cent of these people being prosecuted are upstanding members of the community who have never had any trouble before. It is a completely foreign environment to them. The stress levels are significant." My Moylan had to talk down one farmer out of a suicide attempt.

"It's bloody awful. It's not enjoyable work."

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He hopes the new directive that ends remediation orders and seeks a more conciliatory approach will stem the number of prosecutions. He said it was ludicrous that people were still being prosecuted under an old act, and that situation should never have existed. "All of them say the same thing: 'If I knew then what I know now, there is no way I would have done that'."

Like many farmers, he wants to see the detail of the new directive. "The vast majority of these guys under investigation are cash poor."