

Abstract

Company heads have often decided to seriously degrade the environment in order to maximise profits. When caught, they have usually been required to pay a fine and/or publish their wrongdoing. In response to this, there have been growing calls from environmentalists for these decisionmakers be imprisoned for major green crimes. This article examines whether corporate leaders are indeed escaping imprisonment. A case is then made against greater imprisonment because imprisonment contributes to environmental, ecological and species injustice.

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A. Introduction

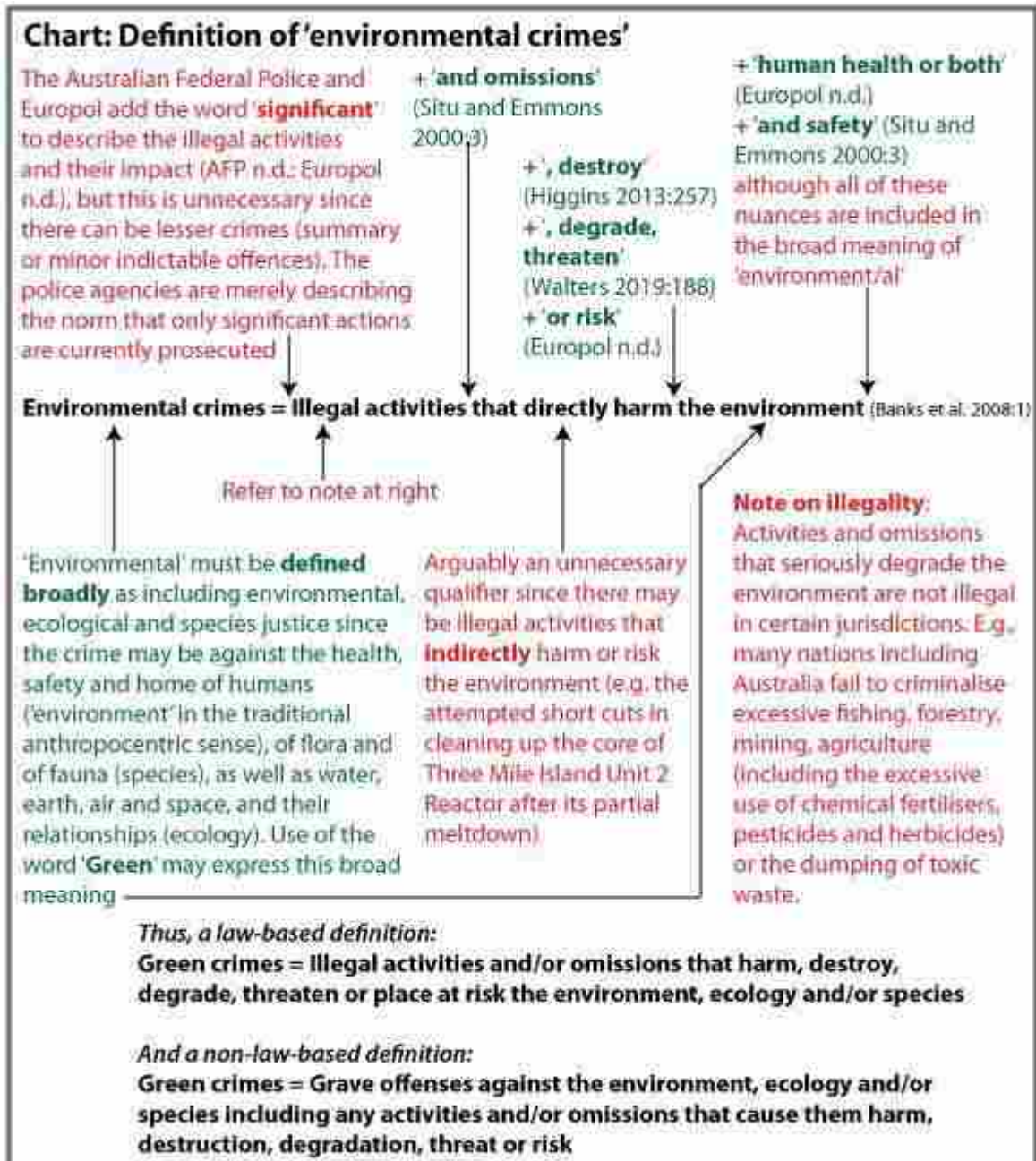
A University of Adelaide study of 9,959 lawsuits filed in U.S. federal courts (2000-2007) found company heads embroiled in environmental disasters generally suffered no reputational damage, whereas CEOs involved in fraud, IP and contract lawsuits were more likely to lose their jobs, lose board seats and find reemployment difficult (Moodie 2016; Liu et al. 2016). At that time, environmental polluters could even be rewarded by shareholders who viewed environmental damage and fines as expected consequences of doing business (Moodie 2016; Liu et al. 2016). Much has changed since then with social justice and environmental sustainability entering the corporate and investment mainstream over a decade ago (Parr 2009:1-3; BSR 2012:1-6). Today, most consumers buy and invest based on sustainability and ethical considerations (Accenture 2022). In this improved milieu, there is now a move to hold polluting decision-makers to account for serious damage to the environment. Many argue that fines and warnings are inadequate to dissuade these

'dinosaurs' (DW 2021b; Symes 1997:196; Lynch et al. 2019:282) from putting profit above environment, and that increasing the likelihood of a prison sentence for green crimes would 'seriously concentrate the mind' of polluters - Jojo Mehta (DW 2021a:0min53sec). Whilst acknowledging the injustice of heavy polluters receiving rare and minimal prison terms, this research essay shall argue that prisons are highly damaging to the environment and ineffective in rehabilitating offenders. Other ways to reduce environmental crimes; to empty and close prisons; and to achieve justice are therefore explored.

The addition of a prison outside a country town effectively involves replacing approximately 100 hectares (1 million square metres) of rich, diverse green fields and wooded habitat with a concrete, bitumen, steel and cut-grass wasteland, with tonnes of building materials, water and energy being expended in the construction process (Brisman and South 2020:11). In the past 30 years, over 45 such prisons have been constructed in Australia and another six have had major extensions (tally from Wikipedia 2022). The prison is then packed with one of the most disadvantaged segments of society (19,023 inmates in the 45 new prisons with another 2,950 prisoners in the six extensions – Wikipedia 2022). Finally, the prison is surrounded by homes occupied by further socially disadvantaged people - Belgian League of Human Rights 2015). It shall be argued that imprisoning more people, even in so-called 'green prisons', contradicts the basic tenets of green criminology.

A1. Key terms

'**Environmental crimes**' (or '**eco-crimes**' or '**green crimes**') may be defined in simple terms as illegal activities that directly harm the environment (Banks et al. 2008:1), but this is an inadequate definition for this research essay given that important nuances may be added:



The term **'ecocide'** was defined by Earth lawyer, Polly Higgins as: 'the extensive damage to, destruction of or loss of ecosystem(s) of a given territory, whether by human agency or by other causes, to such an extent that peaceful enjoyment by the inhabitants of that territory has been severely diminished (2013:257). Comparing this definition with the two for 'green crimes', firstly, Higgins' definition denotes high-level impact with the words 'extensive' and 'severely,' as appropriate for International Criminal Court (ICC) cases. Secondly, Higgins speaks about 'peaceful enjoyment' in recognition that all crimes under the Rome Statute are against peace. Thirdly, the peaceful enjoyment is for all 'inhabitants' of the territory, which

includes all species. Fourthly, Higgins does not refer to 'crime' or 'offence', but to 'harm'. As Higgins says, criminology may confine itself to legally defined crimes and adopt a legal-procedural approach, or also study lawful activities with harmful consequences and adopt a critical or socio-legal approach. Clearly, the strength of the international crime of ecocide is that it can deal with all socio-legal harms (Higgins 2013:252). Fifthly, Higgins wisely states that the ecocide could be caused by humans or have other causes. With the latter, Governments must take responsibility for the reparation.

Where 'forest' is mentioned, it accords with the definition of 'woodland forest': land dominated by trees with a height of at least two metres and a crown cover of 20-50 per cent. Where 'open forest' or 'closed forest' is mentioned, it is the same but with >50-80% or >80-100% crown cover respectively. Crown cover is the area of ground covered by tree canopies, ignoring overlaps and gaps (DAWE 2018). Other terms are defined in the text.

B. Research Questions

Four main research questions (primarily addressed in Section D) are as follows:

B1. To what extent is imprisonment currently being used as a sanction for environmental crime?

Frequency and length of imprisonment shall be quantified for the Land and Environment Court of New South Wales, a ground-breaking court established on 1 September 1980 by the *Land and Environment Court Act 1979* (NSW) as the first specialist environmental superior court in the world (NSWLEC 2020a). The research essay shall examine every environmental crime heard by the court in the past five years. Australian statistics shall be compared with those from several other countries.

B2. Should green criminologists advocate imprisoning polluters (or anyone else)?

Whether more frequent and lengthy imprisonment of polluting decision-makers would be an effective punishment and deterrence for environmental crime is outside the scope of this

research essay. However, even if decision-makers have seriously polluted the environment for corporate and personal gain, and even if imprisonment may be found effective in punishing and deterring them, it shall be argued that green criminologists should endeavour to empty and dismantle prisons rather than expand them due to the following three green injustices involved in mass incarceration (Aertsen 2019:4min21sec):

- (a) Environmental injustice:** Environmental discrimination is part of environmental injustice and stems from the environmental racism movement of the 1970s and 1980s when disadvantaged people were observed to live in inferior environments with less access to nature and with more waste stored nearby (Bergman 2019). Social inequalities are strongly associated with ecological inequalities (Aertsen 2019:2min54sec). It may be small towns that are among the ten most polluted in Australia such as
Prisoners are mainly from disadvantaged backgrounds (Tanton et al. 2021:8-10; Glass 2015:5), and they live in inferior environments (Opsal and Malin 2020). Australia's largest prison, Clarence Correctional Centre (CCC), shall be taken as the main case study. Environmental injustices associated with this prison shall be elaborated upon, and subsequent sections of this research essay shall refer back to this main case study.
- (b) Ecological injustice:** Prisons (and prison museums) are vast areas of concrete and bitumen with the occasional lawn, but largely devoid of creeks, lakes, trees and natural grasslands. The CCC case study shall examine how the construction of the prison failed to meet multiple planning, development and environmental requirements with devastating results for the local ecosystem. For example, the natural flow of water across (and filtering into) this 197-hectare site is prevented by 62 buildings up to 10m high, additional administrative buildings, carparking for 700, and concrete and bitumen in between (BBC Consulting Planners 2017:14).

- (c) **Species injustice:** Returning to the example of CCC, the focus will shift to how the government completely failed to ‘protect, maintain and improve native biodiversity’ and habitats of significant species so they may survive in the long term. Fragmentation shall also be examined because the new prison effectively isolated an adjacent forest from the river.

B3. What is the impact of prisons on the environment?

As Jewkes and Moran observe: ‘the expansion of correctional systems... has been widely criticized by criminologists and others for its financial and human costs but the environmental cost of mass incarceration has yet to attract widespread critique’ (2015:452). As part of this critique, four prisons including CCC shall be studied to reveal ways in which most of Australia’s prisons, youth detention centres and prison museums severely damage the environment (DELWP 2021) and meet the non-law-based definition of ‘green crime.’

B4. What are the alternatives to prisons?

Since prisons perpetuate green injustices; are highly ineffective for reforming people; are a huge burden on the tax system; and are themselves green crimes in the sense of causing grievous harm to the environment, the question becomes what alternatives are available. As shall be seen, there are a range of technological, political and judicial solutions available.

C. Emerging debates

C1. Whether more polluters should be imprisoned for green crime

The first Australian incarceration for an environmental crime occurred in Western Australia in 1995 (Symes 1997:196). The author commenting on this stated, ‘These developments are good news for those concerned about the environment who have long felt that companies were not taking environmental protection seriously’ (1997:196).

Environmentalists, frustrated by the rare and lenient prison terms for green crime and aware of the grievous harm humans are doing and the urgent need to reverse this, currently lean towards calling for green crime to be taken more seriously when sentencing. This is an

understandable reaction, but this essay takes an opposing view: that greater imprisonment is not something that green criminologists should support (even for heavy polluters), except as a last resort because the Australian prison industry is highly ineffective (even criminogenic), retributive (even violent), discriminatory (even oppressive) and polluting (even ecocidal). As Braithwaite argues, prison should be reserved for those who reject restorative alternatives and still insist on polluting (Braithwaite 2019).

There have also been multiple calls for the Rome Statute to be amended to make ecocide the fifth international crime against peace, thereby prosecuting serious polluters even when their nation fails to treat the extensive and grievous damage as a crime (Higgins et al. 2013). This movement has been led by Pacific Island States that have the most to lose from contributions to climate change (Tavoa 2021), and the ICC Office of the Prosecutor is now considering in detail how they could prosecute ecocide (Pereira 2020). The opposition of this essay to greater imprisonment for environmental crime does not extend to opposing criminalization of ecocide in the ICC because domestic laws, international treaties and UN pressure already resist severe and extensive damage to the environment such that a party that commits ecocide is doing so with complete disregard for all species and the ecology of the world. We are already at the 'last resort' stage for imprisonment of State leaders who cast aside all restraint and commit international ecocide for individual or national gain.

C2. Whether prisons do more harm than good

There were 40,862 people in custody as at Dec 2021 (ABS 2022a). The Australian population at that time was 25,762,298 (ABS 2022b), so the imprisonment rate was 159 persons per 100,000 *national* population (or 204 per 100,000 *adult* population – ABS 2022a). Although this is the lowest figure in five years due to the effects of Coronavirus on criminal activity, courts and prisons (ABS 2022a), Australia's imprisonment rate is comparatively high, ranking 94th of 223 countries (Prison Brief 2022) and 9th amongst the G20 nations (SAC 2022). Reasons for this prison pandemonium include 'tough-on-crime' populism including mandatory minimum sentences and tougher bail and parole (UNODC 2013:48-49; Cunneen et al. 2016:53-66); the prison-industrial complex including private prisons and other benefitting businesses (Critical Resistance n.d.); lack of investment in rehabilitation and

reintegration resulting in high recidivism rates (Glass 2015); inadequate physical and mental health care (AIHW 2021); and poverty and disadvantage leading to a prison spiral (7:30 Report; Vinson and Rawsthorne 2015:27-43,115; Tanton et al. 2021:8-10).

Then in prison, there is a myriad of criminogenic forces (Borzycki & Baldry 2003:2-3). Exiting from prison, people are even more disadvantaged (Doyle 1999:30; Pękala-Wojciechowska et al. 2021:1-2; Vaisman and Einat 2021:307-312; 319-325; Halsey 2010:545; Collins 2011:17), Society treats them worse because of their criminal record (Baier 2020:221-222,229-230), making it even harder to find accommodation, work and hope.

There is not just over-incarceration, but severe prison overcrowding in most jurisdictions (Wahlquist 2020; Knaus 2017) despite falling crime rates (UNODC 2013:19; Mercer 2021; Knaus 2017; MacDonald 2021). In many cases, prisons have nearly doubled their original design capacity by placing two prisoners in a cell designed for one by replacing single beds with 'temporary' bunk beds or placing mattresses on the floor. Temporary accommodation has generally become permanent and the new term 'operational capacity' (including bunk beds but excluding mattresses on the floor) has replaced 'design capacity.' For example, the Casuarina Prison held 694 prisoners, which was slightly above the operational capacity of 680, yet severely overcrowded given that the design capacity was 397 in 1991 when it was constructed (Morgan 2010; Wikipedia 2022). The overcrowding leads to poor health, lack of privacy, violence and danger for correctional officers (Morgan 2010 iv).

Prison is regarded by many restorative justice criminologists as ineffective retributive justice, even a form of State-sanctioned violence (Grimsrud 2015; Grimsrud and Zehr 2002). The way out of the spiral involves a sustained and coordinated response by all stakeholders, including families, friends, community groups, the entire local community, governments, researchers, charities, support service providers (including bringing together 'employment, housing, disability services, drug and alcohol treatment, mental and general health care, education and vocational training, and generic social services' – Graffam et al. 2017:3).

C3. Whether we should reform prisons, abolish prisons or both

As Mazurek et al. note, there is a tension between prison abolitionists who wish to see a revolutionary end to prisons and prison reformers who wish to improve prisons. A middle

group may wish to see a virtual end to prisons but are pragmatic in recognising that this will not happen immediately, so regard reforms as crucial in the meantime (2020:260).

This balance is difficult because pure abolitionists may argue that such interim reforms are legitimizing the exercise of penal power and violence (2020:260,261). Moves to 'green' new and existing prisons may be an example. At its worst, the token actions of prison builders and authorities to green prisons (such as using the mulch from thousands of felled trees on garden beds within the prison walls) is merely 'greenwashing' that perpetuates the prison-industrial complex (Tanton et al. 2021:11). Jewkes and Moran acknowledge that much can be done to green prisons, but argue that such green discourses are largely symbolic because they support mass imprisonment: 'it may be the penal complex, rather than the environment, which is being sustained' (2015:451). Jewkes and Moran point out that the literature on the greening of corrections rarely posits that the best way to green prisons is to reduce the number incarcerated. Initiatives like 'green-collar training' of prisoners or packing them in recycled shipping containers can make the public positive towards expanding incarceration, and 'green prisoners' can save the prison money and be more easily controlled (Jewell Bohlinger 2020:1128-1133), but the overcrowding, violence, lack of rehabilitation, alienation and recidivism remain. Prisoners are perhaps the best judges of genuine greening, being highly cynical about self-serving initiatives but appreciative about genuine work in the garden, for example, especially if it involves skills and knowledge that will be useful upon release (Jewell Bohlinger 2020:1122, 1131-1132).

C4. Whether to invest in new and improved prisons or justice reinvestment

In 2019-20, prisons cost Australian taxpayers \$5.2 billion per year, or more than \$330 per prisoner per day. AIC calculations for total net cost of imprisonment per prisoner per day (taking into account all costs and savings associated with imprisonment) is \$391.18 per prisoner per day (Morgan 2018:x), 60% higher than the average for OECD countries (Knowles 2017).

Then-Commissioner Richard Spencer of the Productivity Commission stated, 'For low risk prisoners [imprisonment] doesn't keep society safer. We must look at alternatives'. Current Commissioner King agrees: 'Despite this expense, the system isn't working as well as it could

be. Sixty percent of prisoners have been there before – one of the highest rates in the world... Prisons are essential for violent and high-risk offenders. But there is a revolving door for people convicted of low-to-medium risk crime. We can achieve better outcomes for them and society by carefully using alternatives to prison.’ (Productivity Commission 2021b).

One promising way to achieve alternatives to prison is reinvestment. This may involve calling a moratorium on new prisons and extensions, rapid decarceration and diverting the money that would have been spent on prisons towards initiatives that would keep people out of prison, such as public housing accessible to the criminalised and highly disadvantaged women and families (Build homes not prisons 2022) – refer also to section D5.

D. Critical analysis

D1. Imprisonment as a sanction for green crime

There have been very few studies of sanctions for environmental crime (Lynch et al. 2019:277), but some of the main studies are summarised in the table below:

Table: How environmental offences have been punished in the last two decades

Jurisdiction studied	Received a fine	Received a prison sentence	Received both fine & prison	Comments	Date of Data	Source
Belgium (Flanders)	95%	<10% (Rare to receive prison sentence only)	10-15%	80% were individuals (fined on ave. €5,924), & 20% legal entities (ave. €12,651). 75% of defendants were convicted. Ave prison sentence was 5.3 months)	2003-2007	EC 2016; Billiet and Rousseau 2014:191; Lynch et al. 2019: 284
EU (generally)		<2.5%		Researchers say low imprisonment due to (a) most prosecuted cases being minor/ involving first-time	N/A	EC 2016; Billiet and Rousseau 2014:191

				offenders; (b) environmental criminal prosecution is comparatively new & lacking precedent		
Ireland	100%	0%	0%	All cases involved fines and/or cost recovery charges	2004-2014	Lynch et al. 2019: 284
Netherlands, the	89.6%	<0.5%	2.6%	2.7% received community sentences	2008	EC 2016; Billiet and Rousseau 2014:190
UK (generally)	83.79%	0.58%		1.88% received community sentences	2002	EC 2016; Billiet and Rousseau 2014:190
US (generally)		36%		Mean imprisonment (O'Hear study, 2004)	1996-2001	Lynch et al. 2019: 284
US (generally)		22% to 56%		Variation across US EPA regions (Lynch study 2017)	2003-2013	Lynch et al. 2019: 284
US (Federal Court)		30%		Figures derived from Federal Courts with more serious offences. Note 1: US prosecutions of criminal environmental cases rose more than tenfold between 1984 and 2001. Note 2: Nearly 60% were sentenced to one year or less, and <10% were sentenced to >4 years	1996-2002	EC 2016; Billiet and Rousseau 2014:188

These studies indicate that in the UK and Europe less than 2.5% of environmental crime prosecutions typically result in imprisonment. The percentage is much higher in the US, with imprisonment the norm under US sentencing guidelines if the green crime involved release of pollutants into the environment, even if a small amount of non-toxic pollutants (Billiet

and Rousseau 2014:188). It may be noted, however, that even in the US, EPA environmental enforcement actions involve criminal judicial cases in only 11% of cases. Civil judicial cases make up 9%, and administrative actions (with warnings and fines as sanctions) comprise 80% of actions. Taking the range for EPA imprisonment rates across the US of 22% to 56%, this equates to an overall imprisonment rate of 2.5%-6% of EPA actions (only twice the European rates).

Studies are lacking in Australia too, but the last five years of hearings at the Land and Environment Court of New South Wales were examined. This court hears both land disputes and environmental crimes (NSWLEC 2020c) and the latter were analysed. Criminal penalties that the Court may make include imprisonment, fines, community service orders and specific remedial and publication orders (NSWLEC 2020b). NSW has the possibility of up to seven years for environmental crime, the most of any of the Australian jurisdictions.

Table: Sanctions for environmental crimes heard by the NSWLEC over the past 5 years

Jurisdiction studied	Received a fine	Received a prison sentence	Received both fine & prison	Comments	Date of Data	Source
Australia (Land and Environment Court of NSW)	92.41%	1.27%	0%	Examined all criminal cases re environmental crimes (ignored land disputes & procedural matters)	2018-2022	NSWLEC

Source: NSW Caselaw 2022

During the five-year period, only one person (1.27%) was imprisoned for an environmental crime (and he was not also fined). Another person received the closest sanction to imprisonment, a Community Correction Order. The vast majority (97.47%) were found guilty (because prosecutions are usually relatively straightforward), and 92.41% received a fine only (two people were not guilty and four were guilty but not fined). Besides being fined, 36.7% received a publication order only; 8.86% received a remedial order; and 7.59% received both a publication order and a remedial order. Imprisonment for green crimes in Australia is as rare as in Europe, although the fines imposed in Australia are significantly

higher - typically in six to seven figures; and in five figures only for the least serious offences (such as the unlawful removal of a tree, with strong mitigating circumstances).

D2. Green criminologists as advocates for decarceration

This essay asserts that the typical construction of a prison is a green crime in the non-law-based definition. The level of destruction is far higher than the cases heard by the NSWLEC in the past five years (including the only case involving imprisonment) and there is intentionality and repeat offences on the part of governments. Prison construction would generally not, however, satisfy the law-based definition of green crime merely because the Government has habitually made the destruction of ecosystems 'lawful' through: the payment of offsets; the exercise of administrative power to avoid the normal planning and environmental requirements; and legislation to acquire additional power.

Regarding offsets under both State/Territory and Federal legislation, they are an option only after attempting to avoid or mitigate any impacts, and even then, offsets are not to make an unacceptable impact acceptable (e.g. DAWE n.d.). The 'balance sheet approach' (DAWE 2012a:4) is the wrong method to use for threatened species, which should simply not be killed and displaced in such an extensive manner.

Possible hope for greater governmental accountability and transparency may lie in the Independent Review of the *EPBC Act* (Samuel 2020). The Final Report of the Samuel Review found that Australia's environment is declining; that biodiversity is being lost at 'an alarming rate'; that threatened species are mostly deteriorating; and that the *EPBC Act* is unfit for current and future environmental challenges including climate change (Samuel 2020:40-41). One of the four reasons provided for the *EPBC Act* being ineffective was that environmental offsets have become the default, rather than the exception and last resort after all practical options to avoid or mitigate impacts have been exhausted (Samuel 2020:13,17,21,86).

Regarding legislation, an example is the farcical 2020 Major Projects legislation in Tasmania which removes the Minister of Planning from all responsibility as soon as a project is declared a 'Major Project', one of the few stated aims being to 'provide greater certainty for developers' – Jaensch 2020).

As to whether a new prison would satisfy Higgins' definition of 'ecocide' proposed for international crimes (2013:257), the destruction of 70 to 200 hectares of critical native habitat satisfies every part of the definition, including severe diminishment of the peaceful enjoyment by the land inhabitants (multiple threatened species).

Green criminologists have a role in influencing the socio-political control of green crimes (Lynch et al. 2019:281). For example, Higgins reported that 50 countries were ready to include ecocide as a crime against peace, but that four countries – the US, UK, Netherlands and France) removed it (and did so because of intensive corporate lobbying) (2021:3min30sec).

D3. Prisons as incidences of green injustice

(a) Environmental injustice: Prisons are 'rife' with environmental discrimination (Opsal and Malin 2020). They are subject to extremes of temperature (e.g. Roebourne C.C.; Alice Springs C.C.); to mouse and cockroach infestations (e.g. Hakea Prison, Wellington C.C.); cramped conditions (e.g. John Moroney C.C., originally built for youth detention and now over-capacity with grown men in small bunks); and are not evacuated when floods and fires are nearby (e.g. Lithgow C.C. and Geoffrey Pearce C.C.). They are also often built on swamps (e.g. John Moroney C.C.); contaminated landfill sites (e.g. Silverwater MRRC); and former industrial sites (e.g. the heavily contaminated site in Camellia, Western Sydney proposed for a prison of 1,000 inmates) (Tanton et al. 2021:11; Farcic 2013; Gregory and Lowther 2021; Edwards 2022; Bradshaw 2018). Jesuit Social Services describes the relationship between prisons and environmental discrimination:

'The impact of climate change-fuelled crises... should prompt us to reflect on the systems and practices that continue to drive environmental and social harm, including our criminal justice systems. Our reliance on imprisonment as a response to crime is harmful, ineffective, costly and discriminatory. It is also increasingly untenable in a world of worsening climate change.' (2021:1)

People living near prisons also tend to be disadvantaged. For example, Australia's largest prison and one of its newest, Clarence Correctional Centre, accommodates 1700 inmates. The Clarence Valley LGA has the fifth lowest rental affordability in NSW (so the fifth highest level of housing stress) (CVC 2020:32). Grafton has significant disadvantage, including a high youth suicide rate and low levels of education, income and employment (Allam and Porter 2019). Local Aboriginal leaders warned that the new prison would place added pressure on over-stretched health, welfare and housing services, with over 100 prisoners being released each month (Allam and Porter 2019; Doherty 2021). The isolation of the prison further disadvantages prisoner and their loved ones (Doherty 2021). People visiting prisoners from Sydney need to drive 6.5 hours (they could take a train but there is no public transport from Grafton – just an expensive 30-min taxi ride - CCC 2021). Such isolation can limit visitations, and again affect prisoner mental health and reintegration into society. Local Aboriginal leader, Colin Clague, said that on a conservative estimate, 500 partners and 1,000 children of prisoners would relocate for easier visitation, which would again stretch the local health and welfare services (Allam and Porter 2019).

(b) Ecological injustice: CCC has a gross floor area of 90,700 square metres

(Infrastructure NSW n.d.; Allam and Porter 2019; BBC Consulting Planners 2017:95) and is surrounded by a much larger area of cleared and mown grass, totalling 1.97 million square metres (or 197 hectares) (Google Maps 2022a; CVC 2022). This area, 10% larger than the entire Melbourne CBD, has a density of only 8.6 people per hectare. The prison has been operational since July 2020, however it is still zoned as Rural Landscape RU2 as at 05 April 2022, thereby infringing multiple requirements of the Clarence Valley Council Development Control Plan (DCP) (2011). The prison fails to fulfill required objectives for development in rural zones, such as 'Development which is responsive to site constraints and the surrounding environment' (CVC 2011:C1(a)) and 'Development which is of high quality and is sensitive to the rural character of the locality in which it is being developed' (CVC 2011:C1(b)). The natural

flow of water across (and filtering into) this site is prevented by 62 buildings up to 10m high, additional administrative and industrial buildings, carparking for 700 staff and visitors, and concrete and bitumen filling most of the gaps (BBC Consulting Planners 2017:14). Under the *Clarence Valley Local Environment Plan 2011* (NSW), correctional centres are permitted on Zone RU2 land (s3), but not one of the eight objectives of the zone are satisfied (s1) by the prison. The NSW Government which gave consent is therefore responsible for significant damage to the environment.

(c) Species injustice: In 2021, the German environmental group NABU awarded its 'Dinosaur of the Year' to the city of Emden which planned to build on 77 hectares of ecologically sensitive marshland. This is equivalent to one typical prison in Australia. The 197-hectare CCC has the same area as 65 typical greenfield estates (each with 48 homes on 3 hectares). This one prison represents the severe damage done to the environment by approximately 180 prisons, youth detention centres and prison museums throughout Australia (plus 30 demolished prisons) (DELWP 2021). Any developments on RU2 land are required by the local DCP to 'protect, maintain and improve native biodiversity in the Clarence Valley...' (CVC 2011:R2(a)) and to 'retain native vegetation and habitats of significant species in parcels of a size and configuration that will enable existing plant and animal communities to survive in the long term' (CVC 2011:R2(c)). Instead, this huge tract of concrete and cut grass wasteland (Jones 2021) destroys the habitat of wildlife and disrupts forests that are to the east, west and south. Wildlife in the western forest is now cut off from the Coldstream River by the prison to its east and the Pacific Highway to the south, so fauna now needs to skirt the airport on the west and traverse empty pastures to reach water. It is such habitat loss and fragmentation that have been found to be the main cause for the decline of koalas in NSW and Qld (Martin and Handasyde 1999).

D4. Prisons as incidences of green crime

The following four case studies demonstrate how the construction of prisons decimates local flora and fauna species, and typically creates a swampy, unhealthy environment for

human habitation; on a scale of environmental degradation that amounts to green crime according to the non-law-based definition. The case studies show how the State, 'one of the greatest perpetrators of ecological damage' (Halsey 2004:836-837), habitually disregards its own planning and environmental regulations using offsets and enabling legislation.

Case study 1: Clarence Correctional Centre, NSW



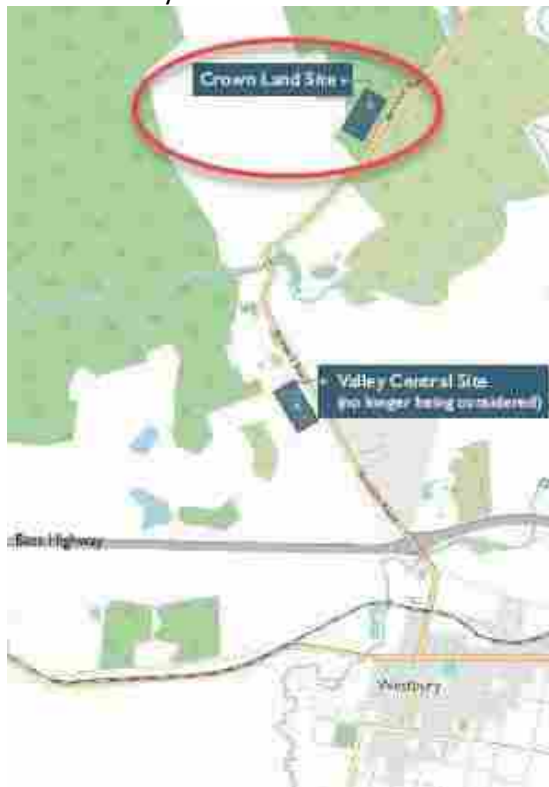
Figure 01: Surviving trees on CCC site

It is clear from the above evidence that the NSW government failed to satisfy most conservation requirements in the local DCP and Environment Plan, but a document by the builder reveals how construction of the prison proceeded. The project and John Holland (JH) purchased ecosystem and species credits for the wetland ecosystem and a range of endangered species (JH 2019:6). The payment of money to pollute does not save the koalas, squirrel gliders and multiple other species in the area following destruction of their habitat, nor does it preserve wetlands. These so-called 'low value swamplands' actually constitute high-value habitat for thousands of plant and animal species (DAWE 2016; McGrath 2022). JH also claims to have preserved 24 ha of trees along the western perimeter. However, overlaying the Google map and aerial photographs with official site borders indicates that few trees survived (Fig 1). JH stated that 6210m³ of mulch was produced from the cleared trees for the prison (2020:6). It may firstly be noted that JH said this mulch was used on garden beds and embankments within the prison, but such an action does little to benefit the species displaced from their habitat. Secondly, the approximate number of trees felled to make way for the prison may be calculated to be approx. 12,567 trees from the quantity of mulch produced (refer Appendix B for calculations). Such wholesale destruction of forests and arable land is typical for mega-prisons worldwide (Rosenberg 2021; Horton 2021). Sewerage leaks are also common in prisons (because they are often built near swamps and because protesting inmates tend to clog the system) (Sansom 2016; Risso and Drummond 2021), with sewerage regularly leaching into the soil and escaping into local waterways (Howard 2020:3; McCann 2020:9).

Case study 2: Northern Regional Prison, TAS



Source: Bailey 2019



Source: Tasmanian Times 2020



Source: Google Maps 2022a

Figure 02: Selected site for Northern Prison in part of Westbury Reserve, Tasmania

The selected site for the Northern Prison in Tasmania is part of Westbury Reserve, which has ‘multiple threatened and endangered species’ (O’Connor 2021), including Peppermint Gums, the endangered Tasmanian Masked Owl, Grey Goshawk and Tasmanian Wedge Tailed Eagle. It is near Westbury, one of the poorest towns in Australia (Microburbs 2022) with the eighth poorest air quality (IQ Air 2022). It is home to the discredited Ashley Youth Detention Centre, soon to be replaced by a new 270-bed Northern Prison. Construction will require the removal of an existing closed forest. Documents released under Right to Information revealed the Tasmanian Liberal Government failed to honour its contractual obligations to protect a legal Reserve to be protected by the State government ‘in perpetuity’ (Woodruff 2021b, 2021c), this despite pressure from the Federal Environment Department, Tasmanian Greens and three local community groups. According to Greens Environment spokesperson, Rosalie Woodruff (2021c), the wildlife reserve is therefore the wrong location to build Northern Prison. As JH did above, however, the Tasmanian Government is seeking to find an ‘offset’ for the Westbury Reserve so that a prison may be

built there (Woodruff 2021b). As Woodruff commented, 'You just can't 'offset' critical habitat of this nature' (2021b).

Postscript: Following 'overwhelming community pressure,' Greens MP, Rosalie Woodruff announced in May 2022 that the Liberal Corrections Minister will change the Northern Prison location from the >70-hectare (Woodruff 2021b) wildlife reserve site to the 32-hectare (Woodruff 2021a) site of the Ashley Youth Detention Centre (the latter being closed ahead of schedule) (Woodruff 2022, 2021a). This site was preferred by the locals and Greens. The concerns are, however, that yet another prison is being added and that the new prison will probably not be contained within the 32-hectare site.

Case study 3: Ravenhall Prison, VIC



Figure 03: Set back plan for Ravenhall Prison

Source: Victorian Government 2014:27

In May 2012, the State Government announced plans to build a new private prison at Ravenhall with a capacity of 1300. Ravenhall Prison was to be constructed in between the existing Dame Phyllis Frost prison for women and the Metropolitan Remand Centre. At that time, the prison site was zoned Public Use Zone 7 and Special Use Zones 2 and 6; and the two grassland conservation areas were Public Use Zone 7. To facilitate the development of the new prison, the prison site was rezoned Special Use Zone Schedule 8 in January 2013 at the request of the Minister for Corrections. Under the Special Use Zone, a planning permit is not required for the use or development of the land for a correctional facility, provided it is in accordance with a Correctional Facility Development Plan (CFDP) (Melton City Council 2013:1,2). Unfortunately, the publicly available CFDP does not include the appendices which include the Environmental Management Plan and other environmental and heritage plans.



Figure 04: Site plan for Ravenhall Prison

Source: Victorian Government 2014:10

The Ravenhall prison site is comprised of:

Site 1: A 40.5-hectare parcel of land west of the Deer Park Bypass where the prison was to be constructed; and

Site 2: A 20.8-hectare parcel of land east of the Deer Park Bypass where associated buildings may be constructed.

These calculations do not, however, include the substantial mown-grass setbacks around the prison (refer Figure 03) totalling approx. another 6.6 ha for the prison accommodation alone. In April 2013, the Minister for Planning determined that the preparation of an Environmental Effects Statement (EES) was not required, subject to the preparation of a specified report (Victorian Government 2014:10). As may be seen in Figure 05 below, none of the original 'high-value' grasslands on the prison site (Melton City Council 2013:2,3) survived the construction of the Ravenhall Prison. Even though the land was rezoned to avoid the planning permit and even though the Minister for Planning did not require what would have been an embarrassing EES, offsets still had to be paid. The Department of Justice made payments to the (then) Department of Sustainability and Environment to fulfil the habitat compensation obligations and also paid a third party for conservation activities for the Golden Sun Moth (Victorian Government 2014:10).

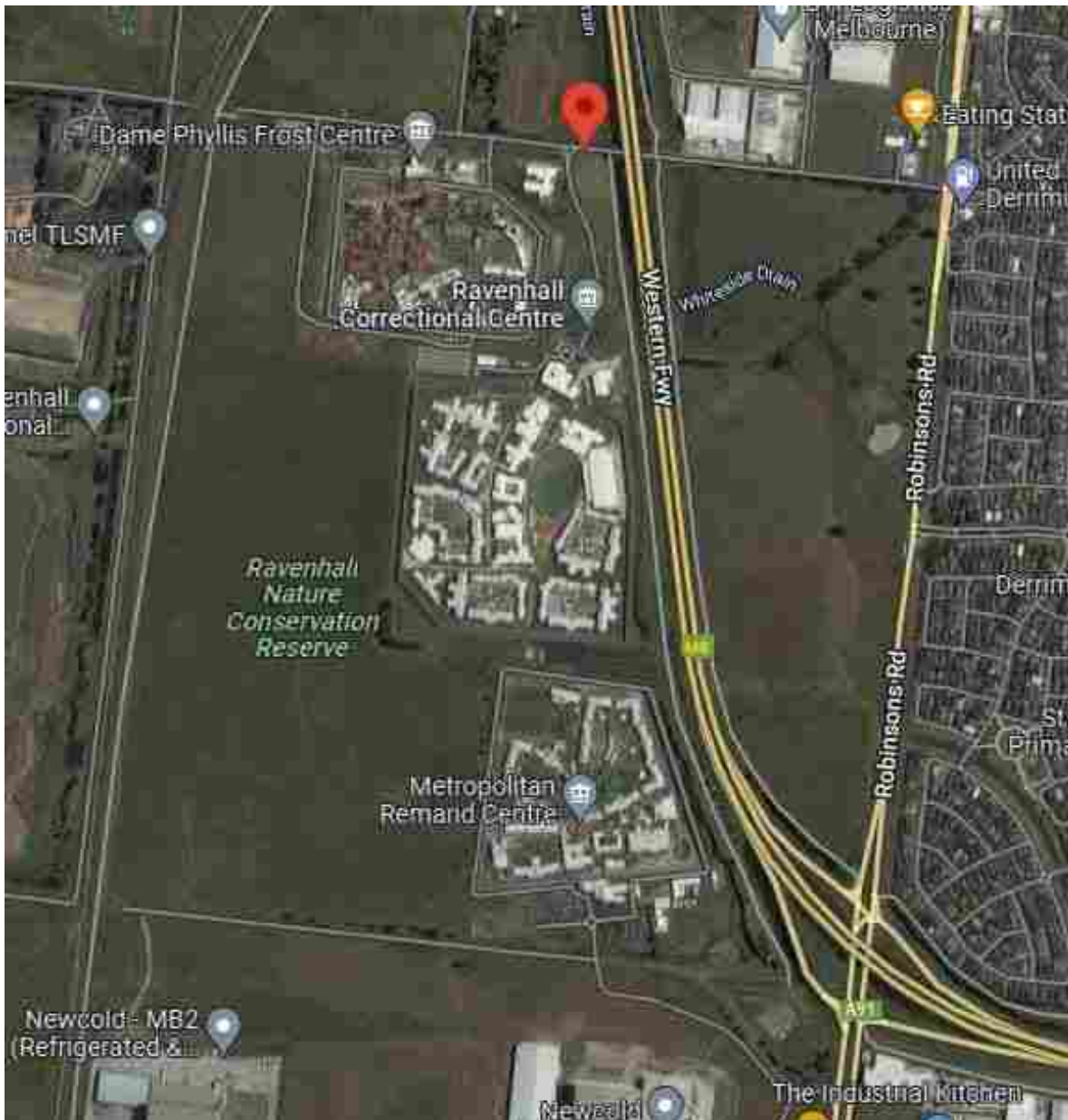


Figure 05: Aerial photograph of Ravenhall Prison

Source: Google Maps 2022b

The 40.5-ha prison site included 16.35 ha of native vegetation, 0.02 habitat hectares of vegetation of High conservation significance and 7.26 habitat hectares of vegetation of Very High conservation significance (7.28 habitat hectares in total). The listed 'Natural Temperate Grasslands of the Victorian Volcanic Plain community' included Plains Grassy Wetlands and habitat for EPBC Act-listed flora species including Spiny Rice-flower and Small Golden Moth Orchid, as well as habitat for EPBC Act-listed fauna species including Striped Legless Lizard, Golden Sun Moth and Growling Grass Frog (with sightings on site and nearby). Site 2 included 4.85 ha of native vegetation and 1.96 habitat hectares of vegetation of Very High

conservation significance. There were also State-listed flora species and it is a Biosite of State significance (Victorian Government 2014:45; Westcott and McCutcheon 2013:v).

Case study 4: Silverwater Metropolitan Remand & Reception Centre (MRRC)



Source: NSW Correctional Services 2020

In 1997, Silverwater MRRC (part of Silverwater Correctional Complex) was built on a previous landfill site (Bradshaw Rubbish Tip), even though the soil was known to contain contaminants (NSW Correctional Services 2020). Bore holes dug in 1991 had revealed that 2.5m to 13m of waste fill was underlying the thin 1m clay surface layer that had been laid as a cap over the landfill. The waste soil was said to contain ‘moderate to high levels of contamination’ (Artefact 2018:48), a prime example of environmental discrimination against prisoners. Silverwater MRRC with a 1,163 capacity has recently been extended for another 440 prisoners (GHD 2018:24,78). The environmental assessment (GHD 2018:35) repeatedly refers to significant contamination but then discounts it each time without justification. For example (with author’s underlining):

'A search of the list of contaminated sites notified to the EPA indicated that the same part of the Silverwater Correctional Complex has been notified under section 60 of the CLM Act. Notified sites are those that the notifiers consider to be contaminated and warrant reporting to EPA. However, the contamination may or may not be significant enough to warrant regulation.

A review of Council's Section 10.7 planning certificate for lot 22 DP 876995 and lot 421 DP 824053 indicates that the identified land is deemed to be significantly contaminated land. However, the certificate indicates that the land is not the subject of a management order, voluntary management proposal, ongoing maintenance order, or a site audit statement.'

Toxins identified at the site included: benzene, toluene, ethylbenzene and total xylene (BTEX); polycyclic aromatic hydrocarbons (PAHs); organochlorine pesticides (OCP); polychlorinated biphenyls (PCB); heavy metals including arsenic, cadmium, chromium, copper, mercury, nickel, lead, zinc, iron, manganese; phenols; cyanides; asbestos; chlorinated solvents; dissolved methane; poly-fluoroalkyl substances (PFAS); and much more. In addition, there is the possibility of fire. At the time of writing, a 17-storey high landfill is currently spewing toxic fumes over New Delhi (particularly the surrounding slum dwellings) after spontaneous combustion (SBS 2022). The same could potentially happen to this 4-storey high landfill site, whether ignited by spontaneous combustion or by a fire such as occurred in 2016 (ABC News), thereby endangering the prisoners and Sydneysiders generally. Besides contaminated groundwater and soil, GHD found landfill gas escaping from the waste, including adjacent areas that are uncapped by the clay layer. There was also potential migration from a former gasworks and a former fuel storage facility (GHD 2018:35). All penetrations of the clay cap, such as through excavations or piling, have the potential to not only be a fire hazard, but to increase contamination migration (GHD 2018:68) and odour hazards (GHD 2018:69). Water from this toxic site also drains 700m into Parramatta River (GHD 2018:67).

D5. Restorative justice applied to green (and other) crimes

In 2010, British lawyer, Polly Higgins, proposed an amendment to the Rome Statute to pre-empt, prevent and prohibit ecocide, whether human-caused or naturally occurring (Higgins et al. 2013:257). Under the principle of superior responsibility, the human-caused ecocide becomes the responsibility of big business as well as nations, and naturally-occurring ecocide becomes the responsibility of governments. For Higgins and colleagues, it was not a matter of imprisoning a leader as retribution for ecocide, but rather it was a *restorative* tool:

‘Who will step in and assist before sea levels rise to disastrous levels? The problem is, no-one has a legal duty of care to throw a life-line. A law of Ecocide will be more than a lifeline – it will impose a legal duty of care upon all nations to pre-emptively help’ (2013:263).

Higgins and colleagues recognized that regulation (and self-regulation) against green crime would result in weak compliance (2013:254), whereas restorative justice (RJ) offered the strongest response (heading on p254) and a practical response, in keeping with green ideals (2013:255). RJ is generally defined as a process whereby all parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future (Marshall 1996:37). RJ is much more than a set of techniques for doing justice for the environment in a more relational way; repairing harm caused by humans by healing earth systems and healing our relationship with nature and each other. It is therefore about tempering human domination of nature (EFRJ 2019:5).

With regard to green crime, Higgins comments that RJ ‘is a remedy that directly addresses the losses of the beleaguered party to restore that which has been harmed rather than simply fixating on the punishment of the perpetrator’ (2010:143).

As most RJ criminologists (including John Braithwaite) stress, RJ is not about forgiveness or mediation (although both may be involved). Rather, it is about removing the hurt, pain and violence that would prevent both victim and perpetrator from healing and moving on. Prison involves the exact opposite, reinforcing the cycle of hurt, pain, violence, illness, bitterness and victimhood. John Braithwaite’s ‘carrot-before-stick’ and ‘minimally sufficient deterrence’ approaches to green crimes involve using RJ techniques first, then offering

carrots and reserving the stick of imprisonment or Braithwaite's non-stigmatizing 'reintegrative shaming' (EFRJ 2019:11) as the last resorts (Braithwaite 2018). An example of when the stick approach is needed is where a decisionmaker is determined to pollute for short-term profit and then disappear. Western Australia alone has 155,563 hectares of land on tenure under the *Mining Act 1978* (WA) and subject to the *Mining Rehabilitation Fund Act 2012* (WA) that is 'actively disturbed' from mining, with only 41,883 ha (less than 27%) under rehabilitation (DMIRS 2021:7). Another example is where organised crime is involved in green crime, now the world's third most profitable criminal activity after drugs and counterfeiting (Interpol 2020; ACIC 2017:36,38-40; Banks et al. 2008).

Applying RJ to green crimes, however, can be different to more traditional crimes. With climate crime, for example it can now be accurately estimated how many will die if certain dangerous industrial activities are not prohibited (Higgins 2021:2min08sec). If there are future crimes, KUL asks who will speak on behalf of the future victims (2019). The challenge may be in applying new parameters for activities in one continent to the people in another (for example, in the Pacific (2021:3min12sec).

Tasmanian barrister and advocate, Cameron Scott, does not see the need for a new Northern Prison in Tasmania if the Government invests the same amount in the causes of crime, rehabilitation, prison-based reintegration, and community services for employment, housing, education, training and other support. He also suggests the implementation of Intensive Corrections Orders (following their success in NSW). Cunneen and colleagues would also expand: early release; abolition of short sentences; justice reinvestment; therapeutic jurisprudence such as the use of drug courts; specialist courts for mentally ill, homeless or Aboriginal people; and attention to colonialism, post colonialism and race as continuing drivers of incarceration (2016:19-66,167-169). Both Scott and Cunneen et al. argue that rather than deterring crime or promoting rehabilitation, prisons actually harm people, compound the issues and lead to recidivism (Scott 2020; Cunneen et al. 2016:167-169). Scott also decries mandatory remand in custody of those accused of family violence rather than providing early intervention, including family counselling and post-offence counselling which can be implemented more easily, at less cost, and to better effect (2020).

Community-based orders are suitable for most of those who are currently incarcerated for summary and minor indictable offences, and are significantly cheaper to administer. The total net cost of imprisonment per prisoner per day is \$391.18 (Morgan 2018:x) compared with \$18.30/prisoner/day for a community order (2018:xi). Weatherburn believes that most people convicted of minor offences should not be jailed because they 'keep their job, they keep their family and all the incentives are for staying out of trouble. Whereas if you go to prison, you will have trouble getting a job when you come out of prison, and if you do get a job it will be a lowly paid job' (Mercer 2021). Numerous studies have also shown that recidivism is lower for those sentenced to non-custodial sanctions than for those imprisoned (UNODC 2013:109-111).

Even many people considered higher risk and/or charged with serious indictable offences can serve their time at home or in house-type facilities outside the prison wall using technological solutions such as electronic ankle bracelets that remotely monitor location and warn if the person moves outside the allowed area of confinement; and/or worn sensors so unlawful or suspicious activity can be monitored remotely by computers (Bagaric et al. 2018:98-110).

The media can benefit society by shifting the focus from fearmongering and calls for harsher punishments to happier stories about rehabilitation and successful reintegration. Activists play an important role in allaying public fears and appreciating the benefits of restoring rather than hardening criminals. Politicians can contribute by reducing the tough-on-crime, truth-in-sentencing rhetoric and leaving corrective decisions to corrective agencies (as occurs in the world-leading Norwegian correctional system - Johnsen et al. 2011; Benko 2015; Hoidal 2018; Midtlyng 2022:6-9). Both activists and politicians will also have to work across the political divide since we all urgently need clean air and, as Braithwaite said, we will need to mobilize rather than limit human power to restore the world (Braithwaite 2019).

E. Conclusion

Advocating for more polluters to be thrown into prison has been a trap for many environmentalists based on emotional or narrow, rather than evidence-based and broad, criminological policy considerations. Many environmentalists have observed that few decisionmakers have been incarcerated for green crimes and that when incarcerated, the prison terms have been lenient considering the ecological damage sustained, concluding that more polluters should be imprisoned and for longer terms. While seeming to be 'just' in terms of traditional retributive law, this stance is actually contrary to restorative and environmental justice because prisons will need to be expanded at the expense of the vulnerable and powerless (of all species). Green criminologists are in a position to contribute by providing RJ alternatives to incarceration for green crime.

Prison reforms alone (including the oxymoron 'green prisons') perpetuate long-term mass incarceration and thus environmental, ecological and species injustices. Abolition advocacy alone sacrifices current vulnerable prisoners and their families to these three green injustices. It is argued that the only way forward for green criminologists is strong side-by-side advocacy for:

- (a) rapid dismantling of prisons (starting immediately, aided by justice reinvestment); AND
- (b) major prison reform (always stressed as merely a necessary interim measure); AND
- (c) reforesting each dismantled prison (or at least providing public housing with parks and amenities).

These actions would be of immediate and lasting restorative value to the most disadvantaged regions in Australia and, far from being an idealistic pipe-dream, would deliver billions of dollars in saved taxes (Productivity Commission 2021a:7; Morgan 2018:1) for redistribution to reduce recidivism, crime, deaths in custody, unemployment, substance abuse, chronic health conditions, poverty and homelessness.

Appendix A

Sanctions for green crimes in the Land and Environment Court of New South Wales

Medium Neutral Citation	Received a fine	Received a prison sentence	Receive both fine & prison sentence	Comments (Note: Info on payment of costs omitted)
2022				
[2022] NSWLEC 60	Y	N	N	Also publication order
[2022] NSWLEC 48	Y	N	N	Also publication order
[2022] NSWLEC 42	Y	N	N	Also to repair harm & publication order
[2022] NSWLEC 40	Y	N	N	Also publication order
[2022] NSWLEC 34	Y	N	N	Also to take remedial action
[2022] NSWLEC 33	Y	N	N	Also publication order
[2022] NSWLEC 32	Y	N	N	Also publication order
[2022] NSWLEC 31	Y	N	N	Also publication order
[2022] NSWLEC 25	Y	N	N	Also to take remedial action
[2022] NSWLEC 23	Y	N	N	Also costs of abatement & publication order
[2022] NSWLEC 20	Y	N	N	N/A
2021				
[2021] NSWLEC 146	Y	N	N	Appeal against fine dismissed
[2021] NSWLEC 135	Y	N	N	Also publication order
[2021] NSWLEC 123	N	N	N	No fine imposed because no environmental harm done yet significant EPA expenses to be paid
[2021] NSWLEC 87	Y	N	N	Conviction appeal dismissed
[2021] NSWLEC 85	Y	N	N	Also publication order
[2021] NSWLEC 81	Y	N	N	Also publication order
[2021] NSWLEC 78 & [2019] NSWLEC 155	N	N	N	An elderly man was charged with multiple offences of possession and harming of bird eggs of protected and threatened species. He kept the emptied egg shells in his eggshell collection despite knowing it was illegal. He received a 14-month Community Correction Order (CCO) (as an alternative to prison due to poor health and adequacy of CCO) with a place restriction on visiting all state and national parks & reserves. He was not fined because of very limited finances, but had to pay the Prosecutor's costs
[2021] NSWLEC 71	Y	N	N	N/A
[2021] NSWLEC 70	Y	N	N	Also planting of replacement trees
[2021] NSWLEC 57	Y	N	N	Also publication order

[2021] NSWLEC 46	Y	N	N	N/A
[2021] NSWLEC 45	Y	N	N	N/A
[2021] NSWLEC 26	Y	N	N	Also publication order
[2021] NSWLEC 25	Y	N	N	Conviction appeal dismissed
[2021] NSWLEC 4	Y	N	N	Also publication order
2020				
[2020] NSWLEC 167	Y	N	N	N/A
[2020] NSWLEC 166	Y	N	N	Also publication order
[2020] NSWLEC 158	Y	N	N	Also publication order
[2020] NSWLEC 147	Y	N	N	N/A
[2020] NSWLEC 134	Y	N	N	Also publication order
[2020] NSWLEC 125	Y	N	N	Also publication order
[2020] NSWLEC 113	Y	N	N	Also publication order
[2020] NSWLEC 112	Y	N	N	Also publication order
[2020] NSWLEC 104	N	N	N	Charges of failure of occupier to operate properly water metering equipment not proved beyond reasonable doubt
[2020] NSWLEC 87	Y	N	N	Appeal dismissed
[2020] NSWLEC 80	Y	N	N	N/A
[2020] NSWLEC 47	Y	N	N	N/A
[2020] NSWLEC 8	Y	N	N	Also publication order
2019				
[2019] NSWLEC 193	Y	N	N	Also publication order
[2019] NSWLEC 184 & [2019] NSWLEC 1	Y	N	N	N/A
[2019] NSWLEC 143	Y	N	N	Also publication order
[2019] NSWLEC 134	Y	N	N	Also publication order
[2019] NSWLEC 120	Y	N	N	Also publication order
[2019] NSWLEC 119	Y	N	N	Also publication order
[2019] NSWLEC 114	Y	N	N	N/A
[2019] NSWLEC 108	Y	N	N	Also remedial work & publication order
[2019] NSWLEC 106	Y	N	N	Also publication order
[2019] NSWLEC 100	Y	N	N	Also publication order
[2019] NSWLEC 97	Y	N	N	N/A
[2019] NSWLEC 95	Y	N	N	N/A
[2019] NSWLEC 90	Y	N	N	N/A
[2019] NSWLEC 88	Y	N	N	Also to take remedial action & publication order
[2019] NSWLEC 79	Y	N	N	N/A
[2019] NSWLEC 72	Y	N	N	N/A
[2019] NSWLEC 66	Y	N	N	N/A
[2019] NSWLEC 69	Y	N	N	N/A
[2019] NSWLEC 54	Y	N	N	Remedial works
[2019] NSWLEC 44	Y	N	N	Also publication order
[2019] NSWLEC 39	Y	N	N	N/A
[2019] NSWLEC 30	Y	N	N	N/A

[2019] NSWLEC 23	Y	N	N	N/A
[2019] NSWLEC 17	Y	N	N	N/A
[2019] NSWLEC 13	Y	N	N	Also publication order
[2019] NSWLEC 4	Y	N	N	N/A
2018				
[2018] NSWLEC 205	Y	N	N	Remedial actions re Aboriginal cultural heritage and also publication order
[2018] NSWLEC 196	Y	N	N	N/A
[2018] NSWLEC 186 & [2018] NSWLEC 185 & [2018] NSWLEC 184 & [2018] NSWLEC 177 (etc)	Y	N	N	N/A
[2018] NSWLEC 126	Y	N	N	Remedial actions
[2018] NSWLEC 124	Y	N	N	N/A
[2018] NSWLEC 119	Y	N	N	N/A
[2018] NSWLEC 108	Y	N	N	Remedial actions
[2018] NSWLEC 99	N	N	N	Found not guilty to charge of operating waste facility without lawful authority
[2018] NSWLEC 96	N	N	N	Although guilty of clearing native vegetation, no conviction was recorded upon the Defendant entering into a 2-year good behaviour bond
[2018] NSWLEC 84	Y	N	N	Remedial actions
[2018] NSWLEC 80	N	y	N	Repeat waste offender sentenced to 3 years imprisonment with a non-parole period of 2 years and 3 months. The defendant, who was the first repeat waste offender charged under the <i>PEO Act</i> , had dumped 461 cubic metres of waste materials including >40 tonnes of asbestos waste as well as 'special' and 'restricted solid' wastes. This construction waste was dumped on 4 properties as purported topsoil. A fine in addition to imprisonment was not considered appropriate, but Prosecutor's costs were to be paid. Also remedial actions to dispose of waste & publication order
[2018] NSWLEC 76	Y	N	N	N/A
[2018] NSWLEC 65	Y	N	N	N/A
[2018] NSWLEC 36	Y	N	N	Also publication order

Source: NSW Case Law: [Land and Environment Court of New South Wales](#)

Appendix B

Average tree in pre-prison closed forest (for estimation of trees felled for CCC given known mulch produced)

Google [street views from April 2008](#) show that prior to the prison construction there were closed forests of small wetland eucalypts, with typical diameters at breast height (DBH) of 80mm to 220mm (average approx. 150mm) and height of approx. 10-25m (average 16m) (compared with fence heights and fence posts). Extracting trees in this average range from data on recorded NSW gum tree weights (using data for the 'high-quality site' because trees on that site are closest to the estimated sizes) (Ximenes et al 2004:37-39,41,72-74,77), the weight of the average 16m-high gum tree of average 152.8mm DBH may be estimated to be 172.95 kg (refer Appendix B). Mulch weighs approx. 350 kg/m³ (ANL n.d.); so 6210m³ of mulch would weigh 2,173,500 kg. If the average pre-prison tree weighs 172.95 kg, then approx. 12,567 trees were cleared to make way for the prison.

Tree No.	DBH (mm)	Tree height (m)	Pages for relevant trees	Whole tree weight (kg)
14	158	18.0	39,74	182.5
26	149	15.5	39,74	154.6
32	147	15.8	39,74	161.7
39	172	16.3	37,72	180.5
71	148	15.5	37,72	160.4
107	145	17.8	38,72	136.4
148	145	12.0	41,77	176.4
151	158	17.5	38,73	231.1
Average:	152.8	16.0		172.95

Source: Ximenes et al 2004:37-39,41,72-74,77

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