



What is insider trading?

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Recent reporting on the [Rodney Forrest insider-trading case](#), including coverage in the [Australian Financial Review](#), has renewed public attention on insider trading and the way Australian regulators investigate and prosecute suspected misconduct.

The case reflects the increasing sophistication of market surveillance and enforcement activity by the Australian Securities and Investments Commission (ASIC), particularly in complex financial markets.

In January 2026, Mr Forrest was sentenced to imprisonment following an ASIC investigation into trading ahead of a proposed takeover of Platinum Asset Management, and he has since indicated an intention to appeal aspects of that sentence.

While high-profile cases highlight the seriousness with which insider trading allegations are treated, they also underscore an equally important point: a regulatory investigation or suspicion of wrongdoing is not proof of wrongdoing. Australian law recognises the presumption of innocence, and individuals and companies facing investigation have important legal rights and protections.

This article provides an overview of:

1. what insider trading is;
2. how it is investigated; and
3. critically, how early legal advice and representation can play a decisive role in managing regulatory risk and protecting your position.

What is insider trading?

In Australia, insider trading is primarily governed by section 1043A of the Corporations Act 2001 (Cth).

In broad terms, insider trading occurs where a person:

- possesses inside information – that is, information that is not generally available and which, if generally available, would be expected to have a material effect on the price or value of financial products; and
- trades, procures another person to trade, or communicates that information in circumstances where trading is likely.

Importantly, the law focuses on possession and use of information, not job titles. Insider-trading allegations can arise in many contexts, including fund management, advisory roles, corporate transactions, and even informal communications.

Is insider trading a criminal or civil penalty issue?

Insider trading can be pursued as either a criminal offence or a civil penalty contravention, depending on the circumstances and the regulator's assessment of seriousness. Criminal proceedings can result in serious penalties, such as periods of imprisonment and substantial fines. Civil proceedings can involve pecuniary penalties, compensation orders, and banning orders.

Not every investigation results in charges, and not every allegation is substantiated. Early legal advice and representation can assist in strategically responding to investigator inquiries, clarifying factual issues, and, in some cases, resolving matters before formal enforcement action is taken.

Who investigates insider trading?

The Australian Securities and Investments Commission (ASIC) is the primary investigator of insider trading in Australia. ASIC may also work in conjunction with other agencies, such as the Australian Federal Police.

ASIC uses:

- sophisticated market-surveillance systems to detect unusual trading patterns; and
- specialist investigation teams to assess whether trading may involve inside information.

Where a criminal prosecution is pursued, a brief of evidence will be referred to the Commonwealth Director of Public Prosecutions (CDPP). Generally, the CDPP will conduct an assessment of the brief of evidence compiled by ASIC, before deciding whether criminal proceedings should be commenced.

It is important to understand that [ASIC investigations](#) are investigatory, not determinative. ASIC's role is to investigate and assess evidence - not to decide guilt.

How do insider-trading investigations take place?

Many insider-trading investigations begin quietly, often without the affected persons being aware.

ASIC investigations may involve:

- market-surveillance to detect unusual trading patterns;
- compulsory notices to produce documents;
- forensic analysis of emails, phones, and trading data;
- [examinations under statutory powers](#); and
- in some cases, search warrants.

At every stage, strategic legal advice can materially affect the course of an investigation and ensure important rights are protected. Such steps may impact how information is provided, how issues are framed, and whether enforcement action is ultimately pursued.

What defences are available to insider-trading allegations?

The Corporations Act contains a number of specific statutory defences and exceptions to insider trading, including circumstances where:

- the information was already generally available;
- the person did not know, and could not reasonably have known, that the information was inside information; or
- statutory exceptions apply (including certain underwriting, takeover or information-barrier scenarios).

Moreover, as is common in criminal and regulatory law generally, the most effective strategy may not involve presenting a traditional defence but rather requiring the prosecution to substantiate the accused's guilt beyond reasonable doubt.

In practice, insider-trading cases are highly fact-specific. Careful analysis of timing, knowledge, access to information, and trading rationale is often critical. Experienced legal advisers can assist in identifying evidentiary weaknesses and viable lines of defence at an early stage.

How should I approach a section 19 examination by ASIC?

ASIC has the power under section 19 of the ASIC Act to compel individuals to attend an examination and answer questions.

A section 19 examination:

- is compulsory;
- is conducted under oath; and

- can have significant legal consequences if mishandled.

While individuals are required to answer questions, they retain important legal protections.

Good preparation is critical. With appropriate legal representation, individuals can:

- understand the scope and purpose of the examination;
- minimise unnecessary exposure;
- ensure their rights are protected throughout the process; and
- feel confident knowing they are as well prepared as possible for the process.

What penalties can be imposed for insider trading?

Where insider trading is established, courts may impose:

- periods of imprisonment (whether or not actual imprisonment is required);
- substantial fines;
- forfeiture of profits;
- compensation orders; and
- banning orders preventing involvement in corporate management.

Outcomes vary widely. Many investigations do not result in criminal charges, and others are resolved through civil or negotiated outcomes. Early, informed legal engagement can significantly influence how a matter progresses.

Do I need a lawyer for an insider trading investigation?

Technically no, but being investigated by ASIC can be confronting. An experienced solicitor's role is to protect your rights and interests, and help ensure you make good decisions when responding to the pressure of the investigation.

Regulatory suspicion is not proof of wrongdoing. All persons are entitled to the presumption of innocence and to assert their legal rights. Obtaining early, strategic legal advice can:

- give you confidence through the process, particularly if you are not experienced with regulatory investigations;
- reduce the risk of adverse action;
- favourably impact the direction of an investigation;
- assist in responding to show-cause or banning-order proposals; and
- protect your position if allegations are ultimately contested in court.

How can Gilshenan &Luton assist me with a white collar investigation by ASIC?

Gilshenan &Luton possesses significant expertise in white-collar crime and regulatory defence, with a distinguished record of successfully supporting clients during [ASIC and other regulatory investigations](#).

We regularly assist clients to:

- respond to [ASIC insider-trading investigations](#);
- prepare for section 19 examinations, and represent clients throughout the process;
- respond to proposed banning orders;
- negotiate with regulators and the prosecution; and
- defend serious allegations in all courts.

If you are under investigation, have received contact from ASIC, or are concerned about potential regulatory exposure, obtaining legal advice at an early stage can be critical.

Contact Gilshenan &Luton to discuss how we can assist you.

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