

Senate Standing Committee on Economics References

The Performance of ASIC

On 21 October 2013 I made Submission 128 to this Enquiry, focussing on the damage done to individuals by ASIC prematurely seeking publicity prior to charges being laid. My submission was restricted in scope as the **NSW Court of Criminal Appeal (CCA)** had not released the reasons for its 17 July 2013 decision to quash my 14 November 2012 convictions for Insider Trading and free me from prison. On 20 November 2013 the CCA provided its reasons, at:

<http://www.austlii.edu.au/au/cases/nsw/NSWCCA/2013/284.html>

Because of the huge personal stresses and costs involved, the actions of ASIC and the Director of Public Prosecutions (DPP) are not often contested, appealed and subjected to in-depth examination by senior judicial resources. **The NSW CCA's reasoning provides a uniquely credible basis on which to review ASIC and DPP performance**, and I am grateful for this opportunity to make a further submission, relating to items b) and c) of the Committee's Terms of Reference, namely *"the accountability framework to which ASIC is subject, and whether this needs to be strengthened;"* and *"the workings of ASIC's collaboration, and working relationships, with other regulators and law enforcement bodies;"*.

I respectfully draw the Committee's attention to my conclusions, supported to a considerable extent by CCA's reasoning, concerning ASIC's investigation and DPP's prosecution of me for Insider Trading:

- By seeking pre-investigation publicity ASIC needlessly damaged me, and may also have predisposed itself to continued pursuit of allegations that were not supported by the facts.
- ASIC did not bring to bear the commercial competence that was required to establish and test the facts during its investigation of me for Insider Trading.
- Throughout this matter, ASIC placed too much reliance on a large commercial organisation, BG Group Plc (BG), and failed to exhibit sufficient discernment in its dealings with BG.
- DPP did not conduct adequate independent due diligence in assessing ASIC's findings and making the decision to prosecute me.
- At times, DPP failed to exhibit a respect for natural justice in its prosecution of me.
- ASIC's failure to acknowledge the substance of the CCA's findings suggests ASIC does not own "Innocent until proven Guilty" as a core value and is indifferent to its impact on those it pursues.

Context - NSW CCA reasons for quashing my convictions for Insider Trading in QGC shares

NSW Appeals proceed by the CCA members reading the trial transcript and related written material, and then hearing oral argument. The CCA heard my Appeal on 17 July 2013 and, after deliberating for only several minutes, ordered my immediate release from prison. The CCA taking so little time to quash my convictions strongly suggests that this was a case where ASIC and DPP had not properly grasped what was involved. This is reinforced by the CCA's published reasons

which largely focus on the CCA's evaluation of the evidence and the reasonableness of the trial outcome. At the headline level, the CCA found that:

- A key aspect of the claimed "inside information" was not made out on the evidence to have been in my possession, and that the Jury could not have been satisfied otherwise, beyond reasonable doubt.
- Most of the claimed "inside information" relied upon by the DPP was publicly available (which meant that a reasonable person would not expect that information to have a material effect on the price or value of QGC shares). The information was also very general and did not go to the terms of a possible relationship between BG and QGC.

Further, the CCA was not satisfied that the increase in QGC's share price following the announcement of BG's joint venture with QGC in February 2008 established that the alleged "inside information" was material. QGC had, at the same time, announced additional gas reserves held by it, and, by then (in contrast to the position when I bought QGC shares), the terms of the BG Group/QGC alliance were known.

My conclusions regarding ASIC and DPP are discussed below for the Committee's consideration, referring to the CCA's findings as appropriate.

The moral hazard created by ASIC's early public positioning

In Submission 128 I highlighted the pre-investigation publicity ASIC sought in my case, asking if an organisation so much in the public eye as ASIC can reasonably claim not to be influenced by the expectations needlessly created by such announcements. I cannot prove ASIC's pre-investigation announcements affected its subsequent judgment in deciding to pursue me, but it is relevant that the CCA noted that the evidence relied upon by DPP against me at trial was stated in stronger terms than in sworn statements made to ASIC four years earlier. DPP ultimately failed to make the charges out at trial, despite one witness seemingly having the ability to recall things more clearly four years on.

The implications of the CCA's reasoning are clear - **ASIC never had the evidence to sustain these charges**, yet they pressed ahead. Did ASIC's early rush to publicise successful pursuit of a high-ranking overseas oil company executive and freeze his assets, colour ASIC's judgment? The question cannot be answered with certainty - but the CCA's findings reinforce the need for the Committee to question closely why ASIC sometimes feels motivated to seek publicity ahead of any formal investigation, doing irreversible collateral damage to the individuals involved.

Commercial resources and expertise available to support ASIC investigations

Failure to comprehend the level of market awareness of the alleged "inside information"

The CCA found that most of the claimed "inside information" relied upon by the DPP was publicly available - this was evidenced by dozens of documents tendered during my Defence.

The real issue is how ASIC failed to:

- discover numerous public documents, including dozens of stock exchange announcements by two publicly listed companies, Karoon Gas Australia Ltd and Oil Search Ltd, that evidenced market awareness of BG's interest in building an Asia-focussed LNG supply position;
- identify dozens of highly relevant broker reports dealing with Australia's Coal Seam Gas (CSG) sector; for example, ASIC completely missed CSG sector coverage by Patersons (arguably the Broker providing the highest quality CSG analysis at the time) that bears an uncannily close resemblance to the "insights" generated by BG and its consultants;
- access energy industry media such as "Upstream" and "Energy News" where articles highlighted BG's interest in the CSG LNG sector, even including speculation in August 2007 that BG may partner with Santos in its Gladstone CSG LNG project; and
- identify dozens of broker and industry media reports that debated the technical and economic feasibility of CSG LNG, canvassing much of the alleged "inside information".

The mechanics of how ASIC made these mistakes are straightforward; for example, lacking an understanding that energy businesses operate on multi-year timeframes, ASIC restricted its data searches to commence six months prior to BG first showing an interest in CSG LNG, thereby missing that two years earlier BG joint ventured with Karoon Gas targeting LNG resources offshore Western Australia, and from late 2006 through late 2007 BG engaged in joint venture discussions with Oil Search concerning PNG LNG. Both Karoon and Oil Search went to great lengths to inform the Australian market (directly via numerous ASX releases and indirectly via analyst briefings) concerning BG's LNG capabilities and Asian LNG market supply strategy, but **ASIC missed all this.**

ASIC seemingly missed that both Arrow Energy and QGC informed the market of their potential interest in CSG LNG prior to BG's interest in the sector, and ASIC completely overlooked extensive broker and media coverage of both Arrow Energy and Santos announcing CSG LNG projects in mid-2007. The possibility of CSG LNG had important ramifications for east coast gas pricing and supply, and the prospect of such massive infrastructure investment caused the Queensland government and others to commission CSG LNG feasibility reports that canvassed many elements of the alleged "inside information". **ASIC's searches failed to turn up any of these studies.**

At trial, DPP led evidence that at the time of my leaving, BG's Chief Executive clearly stated BG's opinion that Estimated Ultimate Recoverable (EUR) gas resource data was not publicly available for Australian CSG companies, including QGC. ASIC missed the fact that in support of an equity raising in August 2006, later in 2006 under takeover threat from Santos, and once again in early 2007, QGC published detailed analyses of the quality and extent of its CSG resources. QGC highlighted in a prospectus, in an expert report and in several letters to shareholders, that it had an equity position of 17 Trillion Cubic Feet (TCF) of Original Gas In Place (OGIP) and, after explaining the concept of EUR to shareholders, speculated that the EUR factor for QGC's CSG fields may reach 80%, i.e. an EUR of 13.6TCF. When BG commissioned a review of the Australian CSG sector in September 2007, it is no surprise that BG's US consultants came up with an EUR for QGC of 13.6TCF. **ASIC's investigation was negligent in accepting BG's inwardly focussed and erroneous view that it was ahead of the market in its assessment of QGC. ASIC failed to recognise that CSG-**

novice BG was "playing catch up" in CSG and that Australia's multi-billion dollar CSG sector had attracted extensive market attention for several years prior to 2007.

Critically, ASIC had ample opportunity to correct these oversights following my participation in an examination in September 2009 where I supplied ASIC with more than a hundred highly relevant documents, including many of those later relied upon in my Defence and Appeal. As near as I can determine, **ASIC paid no heed to the material I supplied**. I spent three years after that interview waiting for ASIC and DPP to bring their processes to a close, and then seven-and-a-half months in prison waiting for the NSW justice system to reach the right outcome.

Relying on flawed Expert evidence

In December 2009 I received an Expert Report ASIC commissioned during its investigation of my alleged Insider Trading. The Expert Report was the first time I was able to comprehend ASIC's view of the alleged inside information, and provided so-called Expert opinion on:

- was the information "inside", or was it known to the market at the relevant time?
- would that portion of the information that was "inside" be sufficiently material to influence someone considering trading in Arrow Energy or QGC shares?

As the CCA has accepted, most of ASIC's alleged "inside information" was well known to the market, yet **ASIC's so-called Expert asserted that every single piece of ASIC's alleged inside information was both unknown to the market and highly material**. The Expert relied upon circular logic, namely that: "As the companies' share prices hadn't risen prior to his trading, the information can't have been in the marketplace at that time" - which only makes sense if the information is material, one of the key issues the Expert was asked to opine on in the first place.

Well established requirements must be satisfied for an Expert to be accredited by the Court, in terms of relevant professional experience and transparent application of this experience to analysing the evidence forming the subject of their Expert Report. It was obvious that this Report was deeply flawed because it canvassed issues far outside the relevant area of expertise of the Expert. Unsurprisingly, the Trial Judge acceded to Defence requests to severely circumscribe the Expert's evidence - he was not allowed to be presented to the Jury as an Expert nor allowed to opine on the availability in the market of the alleged inside information.

Expert evidence doesn't have to be called in support of Insider Trading prosecutions but the CCA concluded that in my case, where the charges were technically and commercially complex, lack of Expert evidence regarding public availability and materiality left the Jury without a safe basis to reason its way to a conviction. **The inadequacy of the Expert and his report were readily apparent to the Trial Judge and CCA Justices - and must surely have been clear to both ASIC and DPP**. Why did ASIC persist when they had failed to commission an Expert Report that would materially assist them? ASIC needs to consider closely the commercial capabilities brought to bear when investigating me, and the quality of ASIC's decision-making.

ASIC's positioning opposite large enterprises

Some submissions to this Enquiry comment unfavourably on ASIC's close relationships with "the big end of town". My experience provides a concrete example where ASIC's lack of discernment and over-reliance on a large company (BG) has ultimately proven detrimental.

The ASIC officer who investigated my case made clear at Trial that he did not look beyond BG for understanding of the key technical and commercial narrative underpinning the Prosecution case. ASIC unreservedly bought into BG's assessment of the "leading edge" nature of BG's foray into the Australian CSG LNG scene, accepting without question the proposition that BG was breaking new ground - with the obvious corollary that surely I must have been relying on insights gained from BG to guide my own CSG investments.

BG paid US consultants a few hundred thousand pounds and gave them less than six weeks to produce what BG elected to believe was a massively insightful treatise on Australian CSG that put BG "ahead of the pack". Put simply, BG believed that the market was unaware of the relative reservoir quality and ultimate recoverable resource potential of the major CSG players. After five years as a member of BG's Group Executive, BG's insular perspective comes as no real surprise to me. Perhaps it is only through such naivety and attendant self-belief that a company having not a single employee with any CSG experience, could commit hundreds of millions of dollars to the CSG sector within weeks of engaging a US CSG consultant to steer its thinking. Such commercial bravery (or self delusion) is rightly the province of private companies and their shareholders, who enjoy the benefits (or costs) of their adventures. But it is completely unacceptable that ASIC was willing to adopt such views, especially in the face of clear-cut evidence to the contrary that I placed before it. **BG's ignorance most assuredly did not provide a sound basis for ASIC's investigation and DPP's subsequent prosecution, which would eventually have to withstand the full glare of NSW judicial process.**

Leaving aside the complex factors (competing personal ambitions; territoriality, etc.) at play between senior executives that may colour their judgment, ASIC must surely be aware that managements will prioritise protecting themselves from criticism by a national regulator, even at the expense of one of their number. **Clearly ASIC must exercise a degree of perspicacity and discernment in not allowing itself to fall hostage to any single, patently biased source of "facts" during investigatory processes that may ultimately lead to institution of criminal proceedings.**

More could be said about the competence of the ASIC resources that had carriage of this matter, and their comportment in dealing with BG, but not at a level that would be useful here. Hopefully there may be an opportunity to share my views with ASIC with a greater degree of granularity.

DPP's role as an independent legal expert opposite ASIC, and its behaviour as a litigant

On 13 December 2013, the DPP made Submission 384 to this Enquiry, highlighting DPP's independent role in deciding to prosecute alleged offences investigated by ASIC. DPP advises ASIC if further evidence is needed to prove offences and applies the Commonwealth Prosecution Policy, requiring:

- separation of investigatory and prosecutorial functions;
- fairness, openness, consistency, accountability and efficiency of prosecutions;
- the need for there to be a reasonable prospect of conviction and a thorough appreciation of the likely credibility of witnesses.

My understanding was that DPP would provide an independent, competent legal review of the key factors underpinning ASIC's Insider Trading allegations against me, but in the four years since DPP became engaged in this matter there is no evidence of such processes at work.

Section 2.4 of the Commonwealth Prosecution Policy states: *A prosecution should not be instituted or continued unless there is admissible, substantial and reliable evidence that a criminal offence known to the law has been committed by the alleged offender.* When measured against the findings of the CCA, it seems, quite remarkably, that **DPP made exactly the same errors of judgment as ASIC concerning the evidence against me.** It simply cannot be that NSW's senior judiciary enjoys a monopoly on commercial insight and the understanding and evaluation of Expert evidence - **rather, the CCA's findings call into question DPP's independence from ASIC's investigatory process, and the quality of its legal evaluation of the case against me.**

Laying of Arrow Energy Insider Trading charges

I was charged with two counts of Insider Trading in each of Arrow Energy and QGC. The Arrow Energy charges were found by the Trial Jury not to be proven and so were not scrutinised by the CCA. However, these charges were as damaging to me as those relating to QGC.

I was charged with trading in Arrow Energy after attending a strategy meeting at which BG discussed CSG LNG as one of a number of possible ways that BG might enter Australia. Charges were laid despite the undisputed facts, all of which were known to ASIC and DPP:

- All information BG had at the time regarding Arrow Energy was from public sources.
- BG never had any real interest in Arrow Energy.
- There was never an "event" linking Arrow Energy and BG that was alleged to have caused any change in Arrow Energy's share price.
- I made no gain or loss on buying and later selling Arrow Energy shares, and provided documentary evidence that I was considering investing in Arrow Energy several months prior to attending BG's strategy meeting.

I believe ASIC opportunistically viewed my trading in Arrow Energy as a chance to extend the reach of Australia's insider trading legislation by establishing legal precedent. This committee should make clear to ASIC that **"legislation by prosecution" is not how Australia wants its Regulator to proceed.** The collateral damage to an individual's life and career is intolerable and far too high a price for any advantage that ASIC may perceive.

DPP does not have the latitude to lay additional charges (that it believes will not succeed) just to establish a pattern of behaviour or a basis for plea bargaining, or to provide a Jury with a vehicle

for trading off against a guilty verdict on another charge. Section 2.5 of the Commonwealth Prosecution Policy states: *A prosecution should not proceed if there is no reasonable prospect of a conviction being secured.* **How did DPP satisfy itself that the Arrow Energy insider trading charges crossed this important threshold when key elements of the offence were clearly absent?**

DPP as a fair litigant - Queensland as venue for prosecution

It was disappointing when DPP announced its intention to prosecute me for Insider Trading, and even more so when they instituted Proceeds Of Crime Act (POCA) proceedings against me **in Queensland** in December 2009. I was resident in the UK, all of ASIC's dealings with me were out of Sydney and so I had engaged Sydney-based lawyers to prepare my Defence. In January 2010, responding to my application to transfer the matter back to NSW, DPP filed a quite remarkable claim that the matter might be heard in either Victoria (the location of my stockbroker) or Queensland, but **not in NSW** - how could this be when DPP's evidence included many ASX documents originating in Sydney, clearly establishing NSW jurisdiction over my conduct?

After six months and several costly appearances by my Sydney- and Brisbane-based lawyers, Queensland's Justice Wilson ruled that not only was there **no jurisdiction in Queensland**, but that in any case, **natural justice dictated that I should be tried in NSW**. Even if there were doubts about the jurisdiction question, surely it must have been apparent to DPP from the outset that it would be fairer to continue with the matter in NSW - **did DPP really need a Queensland judge to explain natural justice to it?**

Justice Wilson awarded me costs in this matter but under established practice DPP was only required to reimburse \$60,000 of the ca. \$100,000 I had spent to win this matter. Very few Australians realise that there is no cost recovery mechanism for criminal cases that end with the accused winning - **this must surely increase the onus on DPP to act fairly when it litigates.**

I note in passing that I have recently been awarded costs against the Australian Federal Police (AFP) in connection with their POCA pursuit of me over the last three years - but just as in Queensland, I cannot expect to achieve 100% cost recovery, despite the AFP Commissioner having withdrawn his unwarranted actions. **How is that fair, especially given the contrast in the resources of a single individual vs. those of the AFP?**

DPP as a fair litigant - DPP at Appeal

A few days before my Appeal hearing DPP filed with the CCA an alarmingly prejudicial summary of the trial. Then, in oral argument, DPP put forward a new construct, namely that various sub-elements of the alleged inside information could provide a satisfactory basis for conviction. The CCA reminded DPP that it was a matter of fundamental fairness that an accused must at all times know the charges against him and that these cannot be altered to suit just those facts supported by the evidence. **Surely this is not how we want Australia's DPP to behave.**

In summary, I have seen no evidence of DPP providing insightful independent legal review of ASIC's allegations or evidentiary base, neither have I been impressed with DPP's commitment to

fairness, either pre-Trial or at Appeal. Judges in both Queensland and NSW have found fault with DPP's fairness in prosecuting me. Surely it must be that many other less well-resourced individuals are routinely oppressed by similar DPP practices.

ASIC's impact on those it pursues, and its cultural commitment to the fundamental principle of "innocent until proven guilty"

Aggressive pursuit - of what?

Some submissions to this Enquiry take the view: *ASIC should be more aggressive in pursuing wrongdoers through the courts - even though this will increase ASIC's failure rate, it will boost the level of deterrence.* But I want to provide this Committee with a counterpoint perspective.

Debates about the desirability of ASIC "taking on the hard cases" are all very exciting when they are theoretical, particularly when they are about somebody else. I do not question the sincerity of Consumer Law advocates and others who urge ASIC to make greater use of the courts - but I venture that these people have never had their lives overturned and their careers ruined by ill-founded legal action. Such sentiments may have greater validity when ASIC is confronting organisational wrongdoing rather than pursuing individuals. But, in my view, **Australia does not want a Regulator who takes "brave" legal action against individuals, seeking judicial clarity where the legal framework for the allegations is weak or unclear, yet the asymmetry of power and resources is all too real and totally overwhelming.** This is most assuredly an area where ASIC needs to be closely guided by Government, not left at the whim of the incumbent ASIC Chairman. Aggressive pursuit of justice is fine - but **ASIC's zeal must first and foremost be applied to establishing and testing the facts.**

ASIC's impact on those it pursues

ASIC today is too focused on burnishing its image as a tough Regulator and is nowhere near achieving an acceptable level of organisational consciousness of the impact it has on innocent individuals. When the Sydney Morning Herald approached ASIC for comment on my Submission 128, an ASIC spokesperson confirmed "public perceptions of ASIC inaction" as the key factor driving ASIC to publicise its activities:

<http://www.smh.com.au/business/jailed-executive-hits-out-at-asic-20131027-2w9hc.html>

Perhaps more tellingly, ASIC's spokesperson did not refer at all to the impact of ASIC's publicity-seeking on my rights or reputation. For him, the potential to impact subsequent legal action was the only cautionary issue around early announcement. **It is just not good enough that the culture of Australia's Corporate Regulator fails to recognise that the people it deals with are innocent, not convicted criminals, right up until the Courts say otherwise.** Successive generations of ASIC management have failed to inculcate this understanding in their staff and it is well past time this Committee made clear its requirements of Australia's Regulator in this respect, which would after all only see **ASIC brought up to the standard of other Australian law enforcement agencies.**

Australia and its States have no legislation mandating compensation for wrongfully imprisoned individuals. Locked up in appallingly hot, cockroach-infested cells with violent, drug-affected offenders, physically assaulted on four occasions (bleeding lips and nose, loose teeth, severe bruising) and scared enough to walk around clenching your fists so as to be ready to retaliate? That's just bad luck. I am finalising an application to the NSW Attorney General for an ex gratia payment and have opened discussions with BG concerning its conduct. **But ASIC needs to understand and truly own the impact it has when it investigates and pursues innocent individuals** - in a way that I just do not get from reading its constant stream of self-congratulatory press releases.

ASIC's website has half a dozen damning entries detailing its pursuit of me - the latest is reproduced at the end of this Submission. These are all that will be found by anyone consulting Australia's national Regulator when contemplating personal or business dealings with me. Seven weeks on from the CCA issuing its reasons for quashing my convictions, the only reference to my acquittal is an obscure footnote, which fails to acknowledge that the CCA found considerable fault with the evidence ASIC gathered to support its allegations. I doubt that ASIC has the integrity to provide a link to the CCA's findings on its website. ASIC has special power to ruin careers and reputations - if ASIC insists on leaving all historic announcements up on its site, **it needs to deal with its losses in equally glaring headlines, not in tiny little footnotes**. This Committee should examine how ASIC acknowledges its failures.

I know from direct experience how hard it is to sustain a meaningful agenda on complex issues like safety, equal opportunity and environmental responsibility in modern, hard-pressed organisations - and I have absolutely no faith or belief that ASIC's senior management is even trying, let alone succeeding, to position respect for "innocent until proven guilty" within ASIC's corporate agenda. **But that is part of their challenge, and it is unquestionably part of this Committee's role to ensure that they do precisely that.**

I would like to conclude by stating how immensely grateful I am for the Australian legal people and processes that eventually got me to the NSW Court of Criminal Appeal and allowed it to run its course. Fairness and integrity of process are pillars of Australian society and **I respectfully remind the Committee that it is no small part of its role to protect these and ensure that ASIC accords them full and due deference**. My experiences, supported by the NSW CCA's independent analysis of the case brought against me, prove this is not the situation we have today.

I would be honoured to appear before the Committee to answer questions and provide further information in support of this submission.

Stuart Fysh

10 January 2014

12-325MR Former BG executive jailed for insider trading

Wednesday 19 December 2012

A former executive vice president of BG Group plc, a large international gas company, has today been jailed for insider trading following an ASIC investigation.

New South Wales Supreme Court Justice Lucy McCallum sentenced Dr Stuart Alfred Fysh to two years imprisonment and ordered he spend at least 12 months in prison before being eligible for parole.

On 14 November 2012, after a four week trial, a jury found Dr Fysh guilty of two counts of insider trading. The charges against Dr Fysh related to his purchase of 250,000 shares in Queensland Gas Company (QGC) in December 2007. The jury found that Dr Fysh had been in possession of inside information relating to BG Group's interest in QGC at the time he purchased the shares. BG Group and QGC announced an A\$870 million strategic alliance in February 2008.

Dr Fysh purchased the QGC shares at an average price of \$3.19 per share. In November 2008, he sold 250,000 shares in QGC at \$5.75 per share for a total amount of \$1,437,500, resulting in a net profit of \$640,000.

Dr Fysh was ordered to pay a pecuniary penalty order in the amount of \$640,857.18 as a result of separate proceedings conducted by the Australian Federal Police under the *Proceeds of Crime Act 2002*.

Dr Fysh will also be disqualified from managing a corporation in Australia, including acting as director of a company, for a period of five years from the date of his release from prison, pursuant to section 206B of the Corporations Act.

ASIC Deputy Chairman, Belinda Gibson said the jailing of Dr Fysh for up to two years should send a solemn warning to the corporate community that using inside information for personal gain is a serious offence that cannot be tolerated.

'The jailing of Dr Fysh reflects the very serious consequences of insider trading. ASIC will continue to use its systems, people and powers to catch insider traders and to achieve fairness in the marketplace', Commissioner Gibson said.

The matter was prosecuted by the Commonwealth Director of Public Prosecutions.

Dr Fysh has filed a notice of intention to appeal against his conviction.

Insider trading actions

Since 1 January 2009, ASIC has prosecuted 26 insider trading actions. Of those, 16 have been successfully prosecuted, comprising 12 matters finalised and four guilty pleas where the individuals are awaiting sentencing. Eight individuals are awaiting trial and are contesting their charges. Two matters have been unsuccessful.

Background

Dr Fysh was convicted and sentenced for insider trading, contrary to section 1043A(1) of the Corporations Act. The maximum penalty for each offence at the time of the offending was five years imprisonment and/or a \$20,000 fine. The maximum penalty has since been increased to 10 years imprisonment and/or a \$495,000 fine.

Refer to ASIC's statement [**MR12-280 Former BG executive guilty of insider trading**](#) for further details relating to this matter.

Editor's note:

Dr Fysh's appeal from his conviction was heard by the NSW Court of Criminal Appeal on 17 July 2013. The appeal was successful and the court ordered that Dr Fysh's conviction be quashed and he be acquitted. The court is yet to publish its written reasons for judgment.