FEDERAL COURT OF AUSTRALIA

Commonwealth Director of Public Prosecutions v Rodney John Forrest

[2026] FCA 14

File number:	NSD 1480 of 2025
Judgment of:	**BROMWICH J**
Date of judgment:	23 January 2026
Catchwords:	**CRIMINAL LAW** – sentencing – where offender charged with two rolled up insider trading offences contrary to ss 1043A(1) and 1311(1) of the *Corporations Act 2001* (Cth) – where offender pleaded guilty to all charges at an early stage – where offender did not give oral evidence at sentence hearing – HELD: sentence of six years imprisonment imposed with a non-parole period of three years
Legislation:	*Corporations Act 2001* (Cth) ss 206B, 911A, 1043A(1) and 1311(1) *Corporations Amendment (No. 1) Act 2010* (Cth) *Crimes Act 1914* (Cth) ss 16A, 16BA, 17A *Evidence Act 1995* (Cth) s 20 *Proceeds of Crime Act 2002* (Cth) s 320 *Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2019* (Cth) *Evidence Act 1995* (NSW) s 20 Revised Explanatory Memorandum, Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Bill 2018 Revised Explanatory Memorandum, Financial Services Reform Bill 2001 Explanatory Memorandum, Corporations Amendment (No 1) Bill 2010
Cases cited:	*Attorney General's Application Under s 37 of the Crimes (Sentencing Procedure) Act 1999 No 1 of 2002* [2002] NSWCCA 518; 56 NSWLR 146 *Australian Building and Construction Commission v Pattinson* [2022] HCA 13; 274 CLR 450 *Australian Competition and Consumer Commission v*

	Reckitt Benckiser (Australia) Pty Ltd [2016] FCAFC 181; 340 ALR 25 *Azzopardi v The Queen* [2001] HCA 25; 205 CLR 50 *Director of Public Prosecutions (Cth) v Gregory* [2011] VSCA 145; 34 VR 1 *Hartman v Director of Public Prosecutions (Cth)* [2011] NSWCCA 261; 87 ACSR 52 *Hili v The Queen* [2010] HCA 45; 242 CLR 520 *Imbornone v R* [2017] NSWCCA 144 *Jones v Dunkel* [1959] HCA 8; 101 CLR 298 *Kamay v R* [2015] VSCA 296; 47 VR 475 *Khoo v R* [2013] NSWCCA 323; 237 A Crim R 221 *Markarian v The Queen* [2005] HCA 25; 228 CLR 357 *Muldrock v The Queen* [2011] HCA 39; 244 CLR 120 *Prosecutions (Cth) v O'Reilly* [2010] VSC 138 *R v Curtis (No 3)* [2016] NSWSC 866; 114 ACSR 184 *R v Pham* [2015] HCA 39; 256 CLR 550 *R v Tait* (1979) 46 FLR 386 *R v Baden-Clay* [2016] HCA 35; 258 CLR 308 *R v Glynatsis* [2013] NSWCCA 131; 203 A Crim R 99 *RPS v The Queen* [2000] HCA 3; 199 CLR 620 *Weissensteiner v The Queen* [1993] HCA 65;178 CLR 217 *Wong v The Queen* [2001] HCA 64; 207 CLR 584
Division:	General Division
Registry:	New South Wales
National Practice Area:	Federal Crime and Related Proceedings
Number of paragraphs:	117
Date of hearing:	15 December 2025
Counsel for the Applicant:	Ms M England SC and Mr E McGinness
Solicitor for the Applicant:	Office of the Director of Public Prosecutions (Cth)
Counsel for the Respondent:	Ms S Callan SC and Ms P Boyle
Solicitor for the Respondent:	Mangioni Biggs + Co

ORDERS

NSD 1480 of 2025

BETWEEN:	**COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS** Prosecutor
AND:	**RODNEY JOHN FORREST** Offender

ORDER MADE BY: **BROMWICH J**

DATE OF ORDER: **23 JANUARY 2026**

THE COURT ORDERS THAT:

1. The conviction on the two charges that was pronounced at the sentence hearing on 15 December 2025 be confirmed.
2. On count 1 in the indictment the offender be sentenced to imprisonment for 5 years, to commence on 23 January 2026 and to conclude on 22 January 2031.
3. On count 2 in the indictment the offender be sentenced to imprisonment for 2 years, to commence on 23 January 2030 and to conclude on 22 January 2032.
4. The offender be eligible for parole on 22 January 2029, after serving 3 years imprisonment.
5. The offender pay the amount of $309,571.84 to the Commonwealth, pursuant to s 116 of the *Proceeds of Crime Act 2002* (Cth) (**POCA**).

THE COURT NOTES THAT:

A. The prosecutor and offender have agreed to order 5.

B. The Court has proceeds jurisdiction pursuant to s 335(7)(c) of POCA.

C. The prosecutor charged the offender with two offences by indictment dated 9 September 2025 (the **indictable offences**).

D. The prosecutor is a "proceeds of crime authority", pursuant to s 338 of POCA.

E. On 23 January 2026, the offender was convicted and sentenced on the indictable offences on the factual basis set out in an Agreed Statement of Facts (**ASOF**).

F. The offender derived a benefit of $309,571.84 from the offending the subject of count 1: ASOF, [3].

G. The penalty amount pursuant to s 121 of POCA is $309,571.84.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

BROMWICH J:

Introduction

1 On 5 August 2025, Rodney John Forrest was charged in the Local Court of New South Wales with:

(a) in the period of almost three weeks between 29 August 2024 and 16 September 2024, two rolled up **insider trading offences**, contrary to ss 1043A(1) and 1311(1) of the *Corporations Act 2001* (Cth), namely that, whilst in possession of inside information about a prospective takeover of a public company, **Platinum** Asset Management Ltd, by a merger:

(i) he bought eight tranches of shares in Platinum in his own name on separate days (**first insider trading offence**); and

(ii) he procured three others, being two individuals and a company, to buy shares in Platinum (**second insider trading offence**); and

(b) over about nine months between 4 January and 8 October 2024, one offence of carrying on a financial service business without holding the necessary licence, contrary to ss 911A and 1311(1) of the *Corporations Act* (**financial services licence offence**).

2 The inside information that Mr Forrest possessed was:

(a) contained in slides called a **Pitch Deck** that he had obtained from a computer at the office of the chairman of the board of the prospective takeover company; and

(b) as to part of the second insider trading offence, a newspaper article about that proposed takeover that he facilitated being written, and expected to be published, by reason of numerous communications he had with an *Australian Financial Review* (**AFR**) journalist after he had obtained the Pitch Deck.

3 On 12 August 2025, being the first mention of the charges in the Local Court, Mr Forrest pleaded guilty to both insider trading offences and was committed for sentence in this Court. On Mr Forrest's first appearance in this Court on 5 September 2025, he was arraigned on an indictment confined to the insider trading offences and adhered to guilty pleas to those offences.

4 Mr Forrest's sentence hearing took place on 15 December 2025, being the first date that was available for all concerned. He was rearraigned and adhered to guilty pleas to the insider trading offences. Mr Forrest asked that the financial services licence offence be taken into account on a schedule under s 16BA of the *Crimes Act 1914* (Cth) in relation to the second insider trading offence.

5 The maximum penalty for an offence of insider trading is now 15 years' imprisonment, reflecting a steep increase as a result of two successive amendments to the maximum penalty since 2010, from 5 years to 10 years in 2010 and from 10 years to 15 years in 2019. The maximum penalty for the financial services licence offence is 5 years' imprisonment. Each category of offence also provided for a substantial fine in addition to, or instead of, imprisonment, but a fine has not been raised as a sentencing option by either side.

6 It is common ground that the offending warrants a sentence of imprisonment. Where the parties disagree is that the prosecutor, the Commonwealth Director of Public Prosecutions (**CDPP**), submits that an actual period of incarceration is required, while Mr Forrest submits that the sentence should either be wholly suspended or served by way of an intensive corrections order.

Evidence for sentencing

7 The evidence on sentence is entirely documentary, with the tender of the various documents either agreed to or not objected to, as follows:

(a) a short written statement of just over a page in length from Mr Forrest dated 4 August 2025, tendered by the prosecutor, which relevantly adopts the original statement of facts agreed to between the parties;

(b) a finalised agreed statement of facts, undated, but filed on 12 September 2025, being a version of the original statement agreed to and adopted, with relatively minor variations;

(c) a criminal history for Mr Forrest, tendered by the prosecutor, which reveals only a single low range drink driving offence from 2007, to which I attach no weight as it has no bearing on the offences before the Court, and which establishes that he has no other prior convictions and therefore no relevant prior convictions;

(d) a sentencing assessment report prepared by a community corrections officer from Corrective Services NSW dated 31 October 2025, tendered by the prosecutor;

(e) a bundle of documents tendered by Mr Forrest in the form of eight written references from 10 people (one reference was a joint reference from three people), letters from him, his wife and his mother, a psychologist's report, and a certificate of appreciation for community service; and

(f) a bundle of newspaper reports tendered by Mr Forrest, relied upon not as evidence of extra curial punishment, but rather as evidence of publicity and humiliation which he suggests reduces the need for specific deterrence.

8 There was no sworn or affirmed evidence, oral or written, from anyone. In particular, Mr Forrest did not give evidence, instead relying upon the material referred to at (e) and (f) above. Necessarily, that means that his documentary account has not been able to be tested by cross-examination.

9 Both the prosecutor and Mr Forrest provided written submissions and made oral submissions.

The key facts and circumstances

10 The details of Mr Forrest's relevant professional background and his offending is contained in an agreed statement of facts (**ASOF**). The following is a summary of the key features of the offending.

The insider trading offences

11 Mr Forrest, now 41 years of age, has graduate and post-graduate qualifications in economics and related areas, and a diploma in taxation law. At the time of committing the offences, he had more than 20 years' experience in senior management, stockbroking and funds management roles. He is a director of an entity called **Sublime**, which operates as a family office to invest his personal wealth.

12 Sometime in about August 2024, Mr Forrest entered into an agreement with Mr Michael Cole and Mr Cole's wife to provide, via Sublime, investment management services to various portfolios held by the McKeage Cole Family Office. He was to be paid a base monthly fee of $15,000 (plus GST, so $16,500) and an additional fee if certain performance criteria were met. In that role, he signed a confidentiality agreement relating to any information he obtained, and used a private office maintained by Mr Cole when he was providing services to the McKeage Cole Family Office. The arrangement must have been in place for some time before the agreement was signed, as Mr Forrest was paid $16,500 on 22 July 2024 and on 16 August 2024 (and also on 18 September 2024, before the offending was revealed).

13 Importantly, Mr Cole was also the chairman of **Regal** Partners Limited, an ASX-listed investment management company, with approximately $16.5 billion in funds under management as at 31 March 2025.

14 At 10.00 am on Friday, 23 August 2024, Mr Forrest attended a meeting with Mr Cole at his office for the purpose of providing investment management services to the McKeage Cole Family Office. At about 12.40 pm, Mr Cole left the room for just under 50 minutes. While Mr Cole was away, Mr Forrest obtained access to Mr Cole's computer and thereby access to Mr Cole's email account without Mr Cole's permission. This in turn gave Mr Forrest access to an email attachment, being the Pitch Deck.

15 The Pitch Deck included the following information defined at [8] in the ASOF as the **Inside Information**:

> a. that a takeover proposal was being prepared for Regal to acquire 100% of the ordinary shares in Platinum via a scheme of arrangement;
>
> b. the offer price of the takeover was proposed to be $1.20 per Platinum share (or $1.30 per Platinum share to Australian-domiciled shareholders who could receive the benefit of 100% of franking credits), comprising a combination of Regal shares and a fully franked special dividend to be paid by Platinum; and
>
> c. subject to Regal receiving due diligence materials in a timely fashion, the takeover was anticipated to be signed and announced by the end of September 2024.

16 The Pitch Deck set out the details of the proposed acquisition of all the ordinary shares in Platinum by Regal, via a scheme of arrangement. Mr Forrest used his mobile phone to take photographs of the Pitch Deck. He thereby had available to him valuable inside information that he had no right to possess, let alone to use to his advantage.

17 The obtaining of that information and its subsequent illegal use constituted a profound betrayal for Mr Cole (and his wife). There is a reference to this effect in the bundle of media articles tendered by Mr Forrest and admitted into evidence (notwithstanding the lack of direct evidence from Mr Cole or his wife that they viewed Mr Forrest's conduct in that way). The information was in any event of a kind that Mr Forrest had expressly agreed to keep confidential, even if it was accessed without permission. It was a profound breach of trust to obtain that information, and an even more profound breach of trust to use it for the purpose of illegal share trading.

18 During a two-week period, commencing on the following Wednesday, 28 August 2024, three working days after obtaining the Pitch Deck, the day before Mr Forrest's first share purchase

on 29 August 2024, and apparently concluding on 12 September 2024 (two days after his last share purchase on 10 September 2024), Mr Forrest:

(a) communicated numerous times with a journalist from the AFR, Ms Kanika Sood, in relation to Platinum, anticipating that Ms Sood would publish an article about Platinum in the AFR – the details of those communications are in the ASOF at [37]-[48]; and

(b) acquired in his own name 2,750,532 shares in Platinum, at an investment cost (including brokerage) of $2,693,383.41, in eight tranches, between 29 August 2024 and 10 September 2024, constituting the first insider trading offence (that is, eight insider trading offences, charged as one rolled up charge).

19 The eight individual purchases of Platinum shares made by Mr Forrest in his own name are summarised in the following table extracted from ASOF [31]:

Date	**Shares purchased**	**Ave price**	**Total consideration***
29 August	206,633	$1.019	$210,651.70
30 August	256,602	$1.007	$258,378.02
2 September	926,563	$0.971	$899,583.31
3 September	619,752	$0.988	$612,276.88
4 September	400,000	$0.973	$389,000.00
5 September	297,704	$0.941	$280,100.34
6 September	41,666	$0.96	$39,999.36
10 September	1,612	$0.93	$1,499.16

* Exclusive of brokerage

20 Separately to his own direct share purchases, during the period between 29 August 2024 and 16 September 2024, Mr Forrest encouraged a number of other persons, by telephone calls and/or texts or WhatsApp messages, to acquire shares in Platinum. Those endeavours were successful with two individuals, Mr Silvio Mizzi and Mr Brendan Leary, and one company, **Jatam** Investments Pty Ltd. The ASOF details those efforts to a limited extent. The result was (ASOF [33]-[36] and [49]-[51]):

(a) Mr Mizzi acquired 400,000 shares in Platinum in multiple tranches between 29 August 2024 and 10 September 2024, investing $325,042.35 (including brokerage);

(b) Mr Leary's company owned and directed by him and his wife acquired 66,246 shares in Platinum on 13 September 2024, investing $64,494.22 (including brokerage);

(c) Jatam acquired 464,539 shares in Platinum in the last 10 minutes of trading on 16 September 2024, investing $457,697.10 (including brokerage).

21 By the time Mr Forrest procured Mr Leary and Jatam to acquire shares in Platinum, he was aware of the additional inside information in the form of the anticipated publication of the AFR article. That publication took place on the afternoon of 16 September 2024 after the share market had closed. I readily infer that Ms Sood's article forced Platinum to make a public announcement before share trading began the next morning, on 17 September 2024.

22 On 18 September 2024, Mr Forrest sent a message to Mr Leary encouraging him to hold off on selling his shares (ASOF [57]):

> Don't sell Platinum. I just spent 45 minutes on phone to Geoff Wilson. He approached PTM board. He is looking under the hood. We may have some competitive tension.

23 Mr Wilson is one of Mr Forrest's referees, but curiously, despite referring to having read a copy of the ASOF, does not refer to this use of his name in the ASOF, or the reference to him having an interest in Platinum. Mr Wilson does not either agree or dispute that this took place, but it is an agreed fact upon which I proceed.

24 As disclosed by ASOF [8(c)], reproduced at [15] above, an announcement had originally been anticipated to be made by the end of September 2024. Before Platinum got to the point of making an announcement, at 4.33 pm on 16 September 2024, after the share market had closed, the AFR published Ms Sood's article. The article stated that Regal was considering making a bid to acquire Platinum, including the observation that while there was "*no certainty Regal will make a formal offer, or that a deal will take place, sources said the proposal is in an advanced state and would be in the form of [Regal] shares*". In light of the reasonably detailed agreed facts as to communications between Mr Forrest and Ms Sood, including WhatsApp messages, I readily infer that at least one of the "*sources*" referred to in the article must have been Mr Forrest. Indeed, there is no evidence that Ms Sood had any other source, such that the references to sources in the plural may have been a device to conceal the existence of a single source.

25 The following morning at 8.51 am on 17 September 2024, before the share market opened, per ASOF [53] Platinum released an ASX announcement titled "*Non-binding indicative proposal from Regal Partners Limited*". In the announcement, Platinum "*confirmed it had received an*

indicative and non-binding proposal from Regal to acquire all of the shares in Platinum via a scheme of arrangement, subject to due diligence".

26 The effect of at least a version of the Inside Information becoming generally available, albeit apparently without a reference to the price of $1.20 per Platinum share (or $1.30, if the shareholder had imputation credits), is succinctly described in the ASOF as follows:

> [54] Between the date that the Offender started acquiring Platinum shares (on 29 August 2024) and 9 September 2024, the price of Platinum shares decreased 9% from $1.03 to $0.93.
>
> [55] On 17 September 2024, following the AFR article and Platinum's ASX announcement, Platinum shares opened at $1.14 and reached an intra-day high of $1.15, before closing at $1.115. This was an increase of 12.5% from the previous day's close.
>
> [56] The volume of trading of Platinum shares on 17 September 2024 increased by approximately 590% from the previous day's trading volume.

27 Between 18 September 2024 and 22 October 2024, Mr Forrest, Jatam, Mr Leary, and Mr Mizzi sold Platinum shares held by them or via corporate entities. The ASOF describes those sales as follows:

> [63] The total realised profit:
>
> a. by the Offender, via the Forrest Commsec Account, for Platinum shares acquired between 29 August 2024 and 10 September 2024, and sold between 18 and 20 September 2024, was **$309,571.84**;
>
> b. by Leary, via Sea & Star, for Platinum shares acquired on 13 September 2024, and sold on 22 October 2024, was **$14,541**; and
>
> c. by Jatam, via the Jatam Commsec Account, for Platinum shares acquired on 16 September 2024, and sold on 23 and 24 September 2024, was **$45,846.56**.
>
> [64] Of the shares acquired by Mizzi (via Marsil) between 29 August and 10 September 2024, only 25,000 shares were sold, on 3 October 2024, for a realised profit of **$4,267.55**. Marsil retained 375,000 Platinum shares, with a current market value on 30 July 2025 of approximately $0.665 per share, reflecting a current **unrealised capital loss of** $118,312.50

The financial services licence offence

28 In the period from about 4 January 2024 to 8 October 2024, Mr Forrest provided investment management services, including to Mr Cole and his wife, without holding an Australian Financial Services Licence (**AFSL**). He initially attempted to obtain a licence, but did not persist in doing so. License requirements are protective of potentially vulnerable investors, and the maximum penalty of 5 years' imprisonment and/or a substantial fine (both substantially increased

to that level with effect from March 2019) indicates that this is a requirement that the legislature takes seriously and thereby seeks to achieve high levels of compliance.

Sentencing principles for insider trading and more generally

29 The introduction of insider trading offences in the *Corporations Act* in 2001 was expressly for the purpose of ensuring the integrity of Australian financial markets: Revised Explanatory Memorandum, Financial Services Reform Bill 2001, at [2.87].

30 The starting point is grappling with the unique nature of the offence of insider trading. Unlike most offences, where the proscribed conduct is itself at least discouraged and often inherently illegal, a market economy thrives and depends on trading and competition. In the field of share trading, which is a subset of the financial products to which the insider trading proscription is directed, prices go up with increased demand, often driven by good news (or perceived good news) and go down with reduced demand, often driven by bad news (or perceived bad news). That is the very point of such a market, which depends on relevant information being generally available (including by the operation of continuous disclosure requirements). Buying and selling in such circumstances is actively facilitated and thereby encouraged. It follows that cheating of any kind in relation to price sensitive information is anathema to the proper functioning of financial markets, relevantly here the share market.

31 The antithesis of a properly functioning market is traders acting on information that is not generally available to the wider market. Those who possess information that is not generally available are forbidden to trade, directly or indirectly, unless and until it is so available. It does not matter if the information is good news or bad news, nor whether the inclination is to buy or sell because of, or despite, that information. Failure to maintain that state of affairs risks causing unquantifiable loss to individual traders and harm to the community at large by damaging the integrity of the market as a level playing field: *R v* ***Curtis (No 3)*** [2016] NSWSC 866; 114 ACSR 184 at [24] (McCallum J).

32 The whole point of the insider trading prohibition is therefore to maintain the integrity of the market by creating and maintaining a level information playing field. Security markets "*could not survive and flourish without the confidence of those who elect to invest*": *Director of Public Prosecutions (Cth) v O'Reilly* [2010] VSC 138 at [19] (Forrest J).

33 As was pointed out in *Hartman v Director of Public Prosecutions (Cth)* [2011] NSWCCA 261; 87 ACSR 52 at [94] (Whealy JA, Adams and Latham JJ):

> It needs to be remembered that insider trading not only has the capacity to undermine the integrity of the market, it also has the potential to undermine aspects of confidence in the commercial world generally. The principles of confidentiality and trust are fundamental to the operation of many commercial transactions. As the applicant's employer recognised, advance knowledge by its employees of proposed trades of a significant kind required, as a matter of trust, that they remain in the realm of confidentiality. Insider trading is a form of cheating. Put bluntly, it is a form of fraud, even though its consequences may be more opaque than general fraud: *McQuoid* [2010] 1 Cr App R (S) 43; *R v Rollins* [2011] EWCA Crim 1825.

34 Thus, trading in shares is either forbidden or permitted according to the nature of the price sensitive information that a would-be trader possesses. Trading in the same financial products may be legal at one point in a day, and illegal at another, according to the general availability of the information the trader possesses at that time. Equally, trading in the same financial products at the same time may be legal for one trader, but illegal for another, depending on the general availability of the information they each possess. This fluid dynamic alone makes detection, investigation, prosecution, conviction and punishment of insider trading inherently difficult to achieve. Although regulators now have access to improved technology including, presumably, artificial intelligence tools that can assist in detecting suspicious trades, the difficulty of detection remains a salient feature of insider trading regulation.

35 It follows that a paramount consideration on sentence for the offence of insider trading is general deterrence. If the chance of getting caught is perceived to be low, the consequences of offending and being caught must be correspondingly high. That is the only way the reward part of the conduct may be seen to be offset by the risk part, to help to prevent it happening. This forms part of the broader understanding of how general deterrence works: see *R v Tait* (1979) 46 FLR 386 at 399 (Brennan, Deane and Gallop JJ):

> When an organized, costly and complex offence is contemplated, the risk of apprehension and the severity of punishment is evaluated; and thus there can be no other class of case in which the deterrent effect of punishment can more confidently be assumed to operate.

36 In *Kamay v R* [2015] VSCA 296; 47 VR 475, Warren CJ, Redlich and Kaye JJA endorsed a number of statements of principle in prior cases as follows:

(a) at [52], their Honours quoted with approval the following statement of principle in *R v **Glynatsis*** [2013] NSWCCA 131; 203 A Crim R 99 at [79] (McCallum J), a case in which an order that a term of imprisonment be served by way of an intensive corrections order was overturned on a prosecution appeal, and replaced with a sentencing involving actual incarceration:

> The acquisition or disposal of financial products by people having the unfair advantage of inside information is criminalised because it has the capacity to unravel the public trust which is critical to the viability of the market. It is, as previously observed by this Court, a form of cheating. The fact that people of otherwise good character and compelling personal circumstances are tempted to engage in such conduct emphasises the need for the clear deterrent that insider traders should expect to go to gaol.

(b) at [53], their Honours quoted with approval the following statement of principle about the importance of general deterrence in white collar crime in *Director of Public Prosecutions (Cth) v Gregory* [2011] VSCA 145; 34 VR 1 at [53] (Warren CJ, Redlich JA and Ross AJA; omitting footnotes):

> In seeking to ensure that proportionate sentences are imposed the courts have consistently emphasised that general deterrence is a particularly significant sentencing consideration in white collar crime and that good character cannot be given undue significance as a mitigating factor, and plays a lesser part in the sentencing process. ... Moreover, general deterrence is likely to have a more profound effect in the case of white collar criminals. White collar criminals are likely to be rational, profit seeking individuals who can weigh the benefits of committing a crime against the costs of being caught and punished. Further, white collar criminals are also more likely to be first time offenders who fear the prospect of incarceration.

(c) at [55], their Honours quoted from ***Khoo*** *v R* [2013] NSWCCA 323; 237 A Crim R 221 at [99]-[101] (RS Hulme AJ, with whom Leeming JA and Bellew J agreed, omitting footnotes):

> Given the importance to the securities market generally of its integrity and the importance to those involved in significant transactions in that market of being able to keep confidential information concerning imminent or potential transactions, the difficulty to which reference was made means that general deterrence must be given substantial weight.
>
> ...
>
> While in this case there were undoubtedly factors arguing for leniency, it must also be remembered that the Applicant's conduct in each offence amounted to deliberate criminality in full knowledge of that fact and that such conduct was repeated. In my view Marien DCJ was well entitled to impose a sentence of full time custody.

37 While McCallum J in *Curtis (No 3)* at [61] endeavoured to qualify what her Honour said in *Glynatsis* at [79], her Honour's prior reasoning was also quoted and approved, with additional comments, by Leeming JA in *Khoo* at [2]-[5]. His Honour said of the quote from McCallum J in *Glynatsis*, quoted at [36(a)] above, towards the end of [4]:

> in my view the passage is plainly right, at least in relation to the present form of the legislation. How else to construe the increase in maximum penalty from 5 to 10 years

imprisonment?

38 Leeming JA's observation now has even greater force given the subsequent further increase in the maximum penalty from 10 years' imprisonment to 15 years' imprisonment, which is considered in more detail below. That legislative decision must be given effect to.

39 *Glynatsis* is also authority for the following further important point of principle in relation to the weight to be given to profit as against investment when evaluating the seriousness of an insider trading offence. In that case, the prosecution contended that the latter was more important than the former given the element of chance involved in the profit derived, a point that has some application to this sentencing exercise. Hoeben CJ at CL, with whom Rothman and McCallum JJ agreed, said:

> [51] In making that submission, the Crown relied on the observations of Barr J in *R v Doff* (2005) 23 ACLC 317 at [31] where his Honour said:
>
> > It seems to me that the amount invested is a more important indicator of criminality than the amount ultimately realised from the criminal activity concerned. One would not regard as trivial the criminality of an insider trader who ventured much but lost.
>
> [52] The Crown based its submission on the following considerations. The damage to the integrity of the market occurs when the investment is made, regardless of the profit ultimately realised. The profit or benefit ultimately derived from insider trading is often a relatively unimportant indicator of criminality because it is almost invariably determined by chance and events occurring, or failing to occur, after the commission of the offence. Such events are beyond the offender's control.
>
> [53] The Crown submitted that the outcome of the trades, the subject of the second, third, fourth and fifth counts, provide good examples of the latter circumstance. The Crown submitted that the profit gained by an insider trade transaction, governed as it is by chance, is a poor and crude indicator of the criminality involved in such offences. It submitted that the criminality ought not be determined to any significant extent by unpredictable chance of this kind. The Crown submitted that the amount invested is a product of design, whether directed to a prospective profit or some other motivation and therefore a superior indicator of criminality.
>
> [54] I agree with the Crown's analysis. Clearly profit is a relevant factor and was properly taken into account by his Honour. It could become an important factor if for a comparatively small investment, a very large profit were made. In most situations, however, the better indicator of the extent of the criminality must be the size of the transaction and the best way of assessing that is by reference to the amount of money invested, or placed at risk.

40 A final point of principle is that the present two sets of insider trading charges were rolled up to cover a larger number of individual offences, being eight offences for the first, and more than three offences for the second. This was addressed in *Glynatsis* at [66] (Hoeben CJ at CL, with whom Rothman and McCallum JJ agreed):

In support of this submission, the Crown relied upon *R v Richard* [2011] NSWSC 866 where Garling J observed (at [65]) that offences which are rolled up charges, include more than one episode of criminal conduct, such that necessarily the criminality involved is greater than with a charge involving only one episode of criminal conduct. His Honour said:

> [105] The use of rolled up charges by the Crown is a matter of considerable advantage to an offender: *R v Jones* [2004] VSCA 68 at [13] per Charles JA (Phillips JA and Bongiorno AJA agreeing). The advantage to the offender is that the use of a rolled up charge restricts the maximum available sentence to that prescribed by the legislation for the single offence, rather than the total theoretically available maximum sentence from multiple charges.
>
> [106] In this case, the Crown submitted that there was a public interest in presenting rolled up charges. It said that rolled up charges encouraged pleas of guilty and made more efficient the discharge of the Court's workload. It also submitted that presenting the indictment with two rolled charges provided an appropriate available maximum sentence which sufficiently reflected the underlying criminality of Mr Richard's criminal conduct.
>
> [107] I acknowledge, as did Charles JA in *Jones* that a rolled up count can ease the task of a sentencing judge. It does so by limiting the number of separate charges upon which a sentence is necessary and, as a result, limits the range of sentences available.
>
> [108] The other reason that there is a benefit to an offender who pleads guilty to a rolled up charge is that, as only one sentence is imposed for all of the episodes of criminality, the sentence in effect represents a complete concurrence of separate sentences which might otherwise have been imposed for those separate episodes of criminality.
>
> [109] The fact that here the charges are rolled up charges is a relevant matter to which regard must be had in considering the principle of totality and, in particular, questions of concurrence and accumulation of the sentences to be imposed on the individual charges

Comparative sentences

41 The prosecutor did not rely upon any prior sentences as being comparative, because there were none at the intermediate appellate court level (or superior court level) since the maximum penalty was increased in 2019. This approach reflects the views expressed by the High Court in *R v Pham* [2015] HCA 39; 256 CLR 550 at [18], [26] and [28] as to sentencing standards being set by intermediate appellate courts.

42 Mr Forrest provided two schedules of prior sentences, summarising sentences for insider trading and for market manipulation. I did not find the market manipulation sentences of any real assistance as the conduct, while still relevant to market integrity, did not permit any useful comparison by way of any real yardstick for the present offences. With the exception of one

sentence, the prior insider trading sentences relied upon by Mr Forrest were for offences committed prior to the increase in the maximum penalty from 10 years' imprisonment to 15 years' imprisonment, so were not of much assistance. The only insider trading sentence that involved the current maximum penalty of 15 years' imprisonment was from the Victorian County Court, involving offending over 7 days, an investment of a total of $130,635.87 and an unsourced tipoff about a takeover.

43 I did not receive the benefit of any articulation of the unifying principles that any of these prior sentences relied upon by Mr Forrest revealed, so as to render them a meaningful yardstick for the sentences to be imposed in this case: see *Wong v The Queen* [2001] HCA 64; 207 CLR 584 at [59] (Gleeson CJ), quoted with approval in ***Hili v The Queen*** [2010] HCA 45; 242 CLR 520 at [55] (French CJ, Gummow, Hayne, Crennan, Kiefel and Bell JJ). The only unifying feature that I could discern in the cases put forward by Mr Forrest was that the outcome in each involved no time in custody being required to be served. That common feature is not a unifying principle.

44 It follows that I proceed without the benefit of any real yardstick beyond general statements of principle about sentencing for insider trading outlined above, and the substantially increased maximum penalty, considered next.

The increase in the maximum penalty

45 In ***Markarian*** *v The Queen* [2005] HCA 25; 228 CLR 357 in part of [31] the plurality (Gleeson CJ, Gummow, Hayne and Callinan JJ) said that:

> careful attention to maximum penalties will almost always be required, first because the legislature has legislated for them; secondly, because they invite comparison between the worst possible case and the case before the court at the time; and thirdly, because in that regard they do provide, taken and balanced with all of the other relevant factors, a yardstick.

46 The need for that careful attention is particularly acute for insider trading, given that the maximum penalty was increased from 5 to 10 years' imprisonment in 2010, and from 10 to 15 years' imprisonment in 2019. It is now among the most serious of federal offences. A sentence of 15 years' imprisonment is the equal-highest maximum penalty in the *Corporations Act*. As the analysis below demonstrates, the penalties for insider trading, and a wide range of other offences in the *Corporations Act*, were substantially increased in response to concerns about these offences continuing to be committed. As the extrinsic material discussed below

makes clear, the legislature was concerned with the need to deter such offences from being committed, especially the most serious of them.

47 The maximum penalty was first amended and increased on 13 December 2010 to 10 years' imprisonment: *Corporations Amendment (No. 1) Act 2010* (Cth). The explanatory memorandum to the Corporations Amendment (No 1) Bill 2010 provided the context for the amendment:

> [3.4] Insider trading and market manipulation offences cause serious harm to the fair and efficient functioning of Australia's financial markets. These markets function best when information is widely dispersed and investors have confidence in the fairness of markets. It is essential that the penalties associated with these offences reflect the serious impact that a breach can have on Australia's financial markets.
>
> [3.5] The penalties for insider trading and market manipulation offences contained in the Bill also reflect that the benefit that can be gained from engaging in this conduct often far outweighs the maximum penalty that can currently be imposed for a breach.

48 On 13 March 2019, Parliament increased the maximum penalty again to the current maximum of 15 years' imprisonment: *Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2019* (Cth). The revised explanatory memorandum to the Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Bill 2018 reiterated the need for maximum penalties to reflect the seriousness of the offence and stated the following:

> [1.15] Maximum penalties provide a court with guidance on how to punish criminal behaviour. They restrict the court's sentencing discretion as the court is unable to order a penalty in excess of the prescribed maximum penalty. The maximum penalty is generally reserved only for the most egregious cases.
>
> [1.16] The existing maximum imprisonment penalties for a number of criminal offences do not currently reflect the seriousness of those offences.
>
> [1.17] The maximum imprisonment penalty for a number of criminal offences in the Corporations Act, ASIC Act and Credit Act have been increased to reflect the seriousness of those offences, and to deter and punish such behaviour as appropriate. The increased penalties are consistent with penalties for similar offences in other jurisdictions.

49 The significant increase in doubling, then tripling the original maximum penalty is indicative of the legislature's perception of the seriousness of this type of offending. In that context, the prosecutor contends that all else being equal, an increase in maximum penalty should produce more severe penalties than those which have previously been imposed. Support for this contention can be found in the High Court's decision in *Muldrock v The Queen* [2011] HCA 39; 244 CLR 120 at [31] (footnotes incorporated):

> The maximum penalty for a statutory offence serves as an indication of the relative seriousness of the offence: *R v Tait* (1979) 46 FLR 386 at 396-398; *Ibbs v The Queen* (1987) 163 CLR 447 at 451-452; *Gilson v The Queen* (1991) 172 CLR 353 at 364. An increase in the maximum penalty for an offence is an indication that sentences for that offence should be increased.

50 However, while the maximum penalty is important as a marker of the seriousness of the offence, it is but one yardstick that must be considered: *Markarian* at [31], extracted above. In that regard, the Full Court of this Court stated in *Australian Competition and Consumer Commission v* ***Reckitt Benckiser*** *(Australia) Pty Ltd* [2016] FCAFC 181; 340 ALR 25 at [156] (Jagot, Yates and Bromwich JJ), quoted with approval in *Australian Building and Construction Commission v Pattinson* [2022] HCA 13; 274 CLR 450 at [53] (Kiefel CJ, Gageler, Keane, Gordon, Steward and Gleeson JJ):

> Care must be taken to ensure that the maximum penalty is not applied mechanically, instead of it being treated as one of a number of relevant factors, albeit an important one. Put another way, a contravention that is objectively in the mid-range of objective seriousness may not, for that reason alone, transpose into a penalty range somewhere in the middle between zero and the maximum penalty. Similarly, just because a contravention is towards either end of the spectrum of contraventions of its kind does not mean that the penalty must be towards the bottom or top of the range respectively. However, ordinarily there must be some reasonable relationship between the theoretical maximum and the final penalty imposed.

51 Although *Reckitt Benckiser* was concerned with civil penalties for breaches of the Australian Consumer Law, similar principles apply in the criminal context.

52 While a non-custodial outcome in the sense of no-time to serve may sometimes be appropriate for an offence carrying a maximum penalty as high as 15 years' imprisonment, that is going to be at least uncommon. It would probably need to be a case involving either a relatively low level of offending, or an overwhelming subjective case, or some other feature that produces a sentence that is, necessarily, going to have little impact on general deterrence, or some combination of such features.

Mr Forrest's subjective case

53 Mr Forrest places heavy reliance on his own letter to the Court, the psychologist's report, letters to the Court from his wife and his mother, and references, both recent and historic (from 2001). Those documents serve to describe his history and subjective circumstances, including prior good character, and endeavour to establish a low risk of reoffending and thereby an absence of, or reduced need for, specific deterrence to play a part in the sentence determination. They were not supported or produced by sworn or affirmed evidence.

54 My general approach is to give more weight to evidence which addresses general background and character, largely because this is generally less amendable to cross-examination and in my experience is not often challenged. For similar reasons, I would generally give less weight, or even little or no weight, to evidence which goes to the circumstances of offending, especially evidence directed to mitigation, which is generally more contestable but is unable to be tested by the prosecutor as Mr Forrest did not give oral evidence.

55 The stricter approach is supported by the summary of authority on this topic in *Imbornone v R* [2017] NSWCCA 144 at [57] (Wilson J, with whom Hoeben CJ at CL and RA Hulme J agreed), in relation to the general proposition that "*untested out of court statements made to third parties should be treated with caution*":

> (1) Although statements made to third parties are generally admissible in sentence proceedings (subject to objection and the application of the rules of evidence) courts should exercise very considerable caution in relying upon them where there is no evidence given by the offender. In many cases such statements can be given little or no weight: *R v Qutami* [2001] NSWCCA 353 at [58] – [59].
>
> (2) Statements to doctors, psychologists, psychiatrists, the authors of pre-sentence reports and others, or assertions contained in letters written by an offender and tendered to the court, should all be treated with considerable circumspection. Such evidence is untested, and may be deserving of little or no weight: *R v Palu* [2002] NSWCCA 381; (2002) 134 A Crim R 174 at 185, [40]-[41]; *R v Elfar* [2003] NSWCCA 358 at [25]; *R v McGourty* [2002] NSWCCA 335 at [24] – [25].
>
> (3) It is open to a court in assessing the weight to be given to such statements to have regard to the fact that an offender did not give evidence and was not subject to cross-examination: *Butters v R* [2010] NSWCCA 1 at [18]. It is one matter for an offender to express remorse to a psychologist or other third party and quite another to give sworn evidence and be cross-examined on the issue: *Pfitzner v R* [2010] NSWCCA 314 at [33].
>
> (4) If an offender appearing for sentence wishes to place evidence before the court which is designed to minimise his or her criminality, or otherwise mitigate penalty, then it should be done directly and in a form which can be tested: *Munro v R* [2006] NSWCCA 350 at [17]–[19].
>
> (5) Whilst evidence in an affidavit from an offender which is admitted into evidence without objection may be accepted by a sentencing judge (see *Van Zwam v R* [2017] NSWCCA 127), generally the circumstances in which regard should be had to such untested evidence is limited. Affidavits relied upon in the absence of oral evidence on oath frequently contain self-interested assertions of a character which makes them almost impossible to verify or test (particularly when served on the Crown in close proximity to, or on, the date of hearing). In the absence of any independent verification of the asserted behaviour, or state of mind, or of a tangible expression of contrition, "to treat this evidence with anything but scepticism represents a triumph of hope over experience": *R v Harrison* [2001] NSWCCA 79; (2002) 121 A Crim R 380 at [44].

56 In particular, in relation to Mr Forrest not giving evidence at his sentence hearing, as was pointed out in ***Weissensteiner*** *v The Queen* [1993] HCA 65; 178 CLR 217 at 227 (Mason CJ, Deane and Dawson JJ):

> ... when a party to litigation fails to accept an opportunity to place before the court evidence of facts within his or her knowledge which, if they exist at all, would explain or contradict the evidence against that party, the court may more readily accept that evidence. It is not just because uncontradicted evidence is easier or safer to accept than contradicted evidence. That is almost a truism. It is because doubts about the reliability of witnesses or about the inferences to be drawn from the evidence may be more readily discounted in the absence of contradictory evidence from a party who might be expected to give or call it.

57 *Weissensteiner* has been somewhat confined in its operation in criminal proceedings by the subsequent High Court cases of ***RPS*** *v The Queen* [2000] HCA 3; 199 CLR 620 and ***Azzopardi*** *v The Queen* [2001] HCA 25; 205 CLR 50 at [18] (Gleeson CJ, albeit in dissent) and at [34] (the majority). Both *Azzopardi* and *RPS* were New South Wales cases in which s 20 of the *Evidence Act 1995* (NSW) applied and was material, being in identical terms as s 20 of the *Evidence Act 1995* (Cth). The principle emerging from those cases was that *Jones v Dunkel* [1959] HCA 8; 101 CLR 298 does not apply in criminal cases without taking into account the right to silence. However, those limitations have little or no application to sentencing as guilt has already been established by either a verdict or a guilty plea; the central purpose behind the right to silence is absent. The underlying principles in *Weissensteiner* have received renewed currency even in criminal cases, at least in non-Uniform Evidence Act jurisdictions, including in federal courts: *R v Baden-Clay* [2016] HCA 35; 258 CLR 308 at [50] (French CJ, Kiefel, Bell, Keane and Gordon JJ). I therefore proceed upon the basis that *Weissensteiner* reasoning is available on issues where there is evidence upon which inferences can be drawn, and Mr Forrest has not given evidence to explain or qualify that evidence so as to resist ordinary available inferences being drawn.

58 Notwithstanding the above principles, in the circumstances of this case, I have taken a somewhat more liberal approach to the evidence relied upon by Mr Forrest, reflected in the consideration of that material which follows.

Mr Forrest's letter to the Court

59 The substance of Mr Forrest's letter and my response to it is as follows:

(a) I accept as reliable Mr Forrest's acknowledgement of the seriousness of the offences he has committed, being really directed to the insider trading offences for which he is to

be directly sentenced, and his admission that they entailed exploiting confidential information for personal gain;

(b) I do not accept his characterisation of his conduct as being no more than an inexcusable lapse in character and judgment. Without evidence directly from him, I am unable to be satisfied, on the balance of probabilities, that this was no more than a lapse, even as to the obtaining of the Pitch Deck. In any event, the conduct in relation to the use of that information was far more than a mere lapse, but rather much deeper and more problematic, as described below.

(c) I accept as reliable Mr Forrest's admission against his interest that he made a conscious choice to do something that he knew was wrong, dishonest and illegal.

(d) I am prepared to accept that he feels shame and guilt at what he has done, but this is tempered by the fact that he initially denied wrongdoing to the police on 7 November 2024, a position which did not change until March 2025, when I infer he knew about the recovery of the Pitch Deck images and his communications with Ms Sood on the seized devices.

(e) I am not in a position, without oral evidence from Mr Forrest, to accept his assertion of taking full responsibility for his actions, especially as that is couched in terms of being a "*grave error in judgment*", but only because that tends to understate the seriousness of his conduct. Importantly, he does not seek to blame anyone else for what he has done, which is what really matters.

(f) I accept as reliable that Mr Forrest's life has changed immeasurably as this accords with the practical reality of his situation. His reference to these changes as being something that he could never have imagined may be more of a reflection that he thought it was unlikely that he would be caught, but I am prepared to accept that as also reflecting an understandable inability to anticipate the extent of the harm his conduct has caused to himself and to those closest to him, both now and in the future. I accept as likely to be accurate that he has destroyed his reputation for being trustworthy and diligent, having integrity and being successful. This conclusion is further supported by the media bundle tendered by Mr Forrest, which shows some of the negative media reporting to which he has been subjected. Whether the damage to his reputation is permanent or not is up to him in the years to come, but there is no reason to doubt that the road ahead for him to rebuild his life is going to be long and difficult.

(g) I do not doubt that Mr Forrest's family has been significantly adversely impacted by him engaging in the offending conduct and being caught. That fact is also clear when regard is had to the contents of the media bundle and the easily accessible nature of those articles. That is a regrettable consequence of behaviour of this kind, especially by people who do not properly appreciate what they already have in the pursuit of more, and stand to lose to the detriment of those closest to them.

(h) I am unable to accept, without detailed and direct evidence from Mr Forrest, what steps he has taken to address his offending, and therefore this basis for having confidence that he will not reoffend. However, I take into account that the rate of recidivism for serious white-collar offending is generally accepted to be low, although not low enough to presumptively assume that there is no role in sentencing for specific deterrence. For the reasons that immediately follow, I consider that specific deterrence remains a relevant consideration, but nowhere near as important as general deterrence, which was not substantively addressed by him in either evidence or submissions (oral or written). That said, it is a difficult topic upon which to say very much.

(i) I accept Mr Forrest's characterisation of his conduct as being designed to make him appear clever and for recognition and accolade. I find this more complex and nuanced explanation an inherently more credible description of the personal gain he saw himself as standing to make from his conduct than simply greed, as the prosecution would have it. That is, Mr Forrest hoped to gain more than just money in the bank, so to speak, as he wanted those substantial financial gains, ostensibly obtained as a result of his skill, diligence and ability as an investor and market analyst, to reflect positively on him for the purposes of his career and to bring future success and presumably wealth as a result.

(j) I accept that Mr Forrest had a difficult upbringing with a psychologically abusive father, whom he paradoxically mourns, because that has the ring of truth, and because his mother gives a sufficiently similar, if more muted, account in her statement. I doubt that this would have been challenged in cross-examination, let alone successfully. This also helps to explain his motivation for obtaining the appearance of success and ability upon a fictitious basis by reason of dishonestly obtaining and using inside information, extending to creating it as well. Explaining and understanding the motivation for his conduct does not condone it. However, it is an indication of the importance of both a degree of specific deterrence for Mr Forrest and more importantly general deterrence

for other would-be offenders, whether they are driven by base financial gain, or more complex motivations such as those that I accept drove Mr Forrest.

(k) I am unable to accept Mr Forrest's asserted motivation to rehabilitate himself, at least in any lasting way, without those easily made assertions being able to be tested in the witness box.

(l) I was initially concerned that the regret he expresses is more directed to the consequences of having been caught, than to having engaged in the offending conduct in the first place. However, upon reflection, I do not think that regret at having engaged in the offending conduct in the first place, and regret as to the consequences flowing from what he has done, perhaps even going so far as to having been caught, are mutually exclusive. The two can coexist and I am therefore prepared to accept, on the balance of probabilities, that Mr Forrest is now genuinely remorseful and does genuinely regret having engaged in the offending conduct, which does reduce to some degree the need for specific deterrence.

60 Mr Forrest's letter is also notable for what it does not say and address. In particular, he makes no reference to where the $2,693,383.41 came from to make the investments in Platinum shares, nor where the proceeds, net of the profit he will forfeit, went. There is no evidence that this money is not still available to him and thus to assist his mother and his wife and children. In the absence of such evidence, I am unable to accept any untested evidence from him, his wife or his mother as to any asserted financial hardship that will be visited upon them if he has to serve any time in prison. I would have had difficulty in accepting the material in evidence as to financial hardship in any event, because it was expressed in conclusory terms, leaving no real scope to assess the basis for the effectively bare assertions being made. That does not detract from the non-financial detriments, which I can more readily accept. I am prepared to accept that the loss of his income and prospects for replacement employment, both as an immediate consequence of his conduct and as a consequence of the sentence to be imposed, will mean that his immediate and extended family will be worse off than they would have been if none of this had occurred.

The letter from Mr Forrest's mother

61 I accept Mr Forrest's mother's general description of Mr Forrest as a son, husband and father of two young sons and his past charitable works. I accept that she is distressed by what he has done. I do not doubt the account she gives about her husband and therefore Mr Forrest's father,

especially in relation to him being harsh towards Mr Forrest. I am willing to accept that her husband, as his life came to an end, asked Mr Forrest to look after his mother and his sister, and that this put added pressure on him, including pressure to succeed and to be seen as successful. I accept that Mr Forrest paid off her mortgage and has given her financial support, but I am unable to accept, without clear and detailed evidence, capable of being tested if necessary, that her circumstances are such that, with no housing debt, she will have to sell her house if he is sent to prison. However, I do accept that she is anxious about her situation if that was to happen and that this may aggravate a skin condition that she describes. I am unable to find that this letter establishes any compelling reason to impose what would otherwise be an inappropriate sentence on Mr Forrest.

The letter from Mr Forrest's wife

62 I am generally willing to accept the background matters that Mr Forrest's wife describes in her letter. They generally describe Mr Forrest as being, ordinarily, a person of good character, a good husband, a good father to their two young sons, and a man disposed to charitable works. I also accept that, while she has professional qualifications and training as a physiotherapist, she has not engaged in that profession since having children and could not readily return to that profession. I accept the adverse impact that the prosecution of Mr Forrest has had on her and her distress at the prospect of him being sent to prison. However, I am unable to accept her untested mitigatory account of his offending, which is necessarily hearsay in nature in any event. I am unable to find that this letter establishes any compelling reason to impose what would otherwise be an inappropriate sentence on Mr Forrest.

The psychologist's report

63 Mr Patrick Sheehan is a qualified forensic psychologist, having practiced for almost 30 years. His resume suggests a professional background with a focus on sexual offenders, high risk offenders, prisoners, people with mental health problems, treatment programs and parole, and so on. There is nothing to suggest any particular history or experience with white collar offending, so as to be able to bring any particular expertise to bear on the assessment of recidivism in this area of offending. I am willing to accept the aspects of Mr Sheehan's report that describe Mr Forrest's background, upbringing, health and general past good character. However, that is not what his report is principally relied upon to establish, as advanced at the sentence hearing and in written submissions for Mr Forrest.

64 I accept the part of [14] of Mr Sheehan's report that describes Mr Forrest as having a need for achievement and success, which I take to be referring also to projecting those attributes to others, because that is consistent with Mr Forrest's letter to that effect. However, I am unable to accept his hearsay account of what Mr Forrest told him about his offending at [19] to the extent it is mitigatory and unable to be tested. In particular:

(a) while I accept that that Mr Forrest was very focussed on the success of his business at the time of the offending, I do not accept that he was conscious of having no income, especially given the retainer of $15,000 per month (excluding GST) Mr Forrest was on for apparently part time work for Mr Cole's family office;

(b) I accept that Mr Forrest felt responsible for his mother and family, and that success was not happening fast enough for him and that he wanted "*to succeed, to win*", not least because this appears to be a consistent account and one that helps to explain his conduct;

(c) however, I am unable to accept the untested assertions that Mr Forrest:

(i) had been in the process of applying for an Australian financial services licence;

(ii) "*came across*" the Pitch Deck (described by Mr Sheehan as files relating to the Regal merger) while engaged in legitimate work on Mr Cole's computer, or that the decision to take photographs of what he found was spontaneous;

(iii) merely seized on the opportunity to understand details of the proposed merger; or

(iv) convinced himself that the wrongdoing was minimal, that this was the "*pivotal self deception*" by which he permitted himself to engage in the conduct, and that he only came to the realisation that his conduct was a betrayal of trust and like descriptions retrospectively.

The current referees

65 Mr Forrest relies upon October 2025 references from Mr Geoff Wilson AO, who is a well-known and outspoken public figure, and five other individuals. The five other than Mr Wilson are all friends of Mr Forrest. They generally attest to him positively as a person and to charitable or other good works. Two refer to the conduct being out of character, one does not refer to the substance of the offending at all, one describes the conduct as being no more than a considerable error of judgment, expresses a belief that he will learn from his error and asks for leniency, and one expresses no doubt about his integrity, which does not engage at all with what he has done. I take all of those references into account, but they do not provide much

assistance in the sentencing exercise beyond adding to material indicating past good character, which is not in doubt.

66 Mr Wilson's reference is in a somewhat different category, because he describes a professional association with Mr Forrest. But his reference is distinctly odd. First and foremost, he does not comment at all on the substance of the offences, let alone express any concerns about Mr Forrest having committed them, or even suggest that it is out of character, beyond noting their seriousness and describing Mr Forrest as reflective and remorseful and having expressed a commitment to learn from these events and "*upholding higher standards in the future*". He describes Mr Forrest as being honest, but, despite saying that he has read the ASOF, does not comment on the lie that Mr Forrest told police about possessing inside information, nor about the generally dishonest nature of the offending. He describes currently engaging Mr Forrest in employment, albeit in research and advocacy work. He does not comment on the 18 September 2024 conversation between them, described at [57] of the ASOF. He concludes his reference by saying that, based on his direct dealings with Mr Forrest over seven years, and the conduct he has observed, it is his view that Mr Forrest has always sought to act with integrity and respect for others. I am unable to usefully deploy much at all of Mr Wilson's reference because of his failure to grapple with the substantive aspects of Mr Forrest's offending.

The 2001 material

67 The material relied upon by Mr Forrest which dates to 2001 goes no further than to describe him as having shown a lot of promise 24 years ago, when he was a teenager, and having made volunteer contributions to the Blue Mountains community. The main point of this is to reinforce his prior good character, which is not in doubt, as outlined above.

Sentencing considerations generally and under s 16A of the *Crimes Act 1914* (Cth)

68 Section 16A contains a non-exhaustive checklist of sentencing considerations that must be taken into account if they arise. I address those that are relevant and have been raised as follows.

Nature and circumstances of the offences: s 16A(2)(a)

69 The offending has been summarised above. I therefore confine this part of these reasons to how that conduct should be characterised and an assessment of its seriousness. The features considered below are to be assessed in light of the principles emerging from the authorities set out earlier in these reasons, without needing to repeat all of them.

First insider trading offence: purchase of shares by Mr Forrest

Second insider trading offence: Mr Forrest procuring the purchase of shares by three others

70 I am of the view that it is too simplistic to characterise Mr Forrest's motivation in committing the insider trading offences as greed, for the reasons set out at [5959(i)] above. But this does not make his motivation any less blameworthy to any measurable degree; it is not a higher moral basis than greed, especially as it was evidently intended to elevate his reputation on a false and dishonest premise.

71 I am unable to accept Mr Forrest's characterisation of his conduct as involving a lack of planning or sophistication. The share purchases were structured in a way that indicates considerable planning, and there is no evidence from him to resist that ordinary inference being drawn. The dealings with Ms Sood to advance a favourable article being published in the AFR also involve planning and a degree of sophistication.

72 It is unclear how much planning or premeditation went into obtaining the inside information. It is possible that it was preplanned, but equally possible that it was opportunistic in the sense of grabbing the opportunity when Mr Cole left the room. I readily infer, and am satisfied beyond reasonable doubt in the absence of any evidence to limit drawing the obvious inference, that Mr Forrest did not merely chance upon the Pitch Deck, which would be a most unlikely coincidence. But I am left in the dark as to how he was able to find, and therefore to photograph, the Pitch Deck. It was not in the nature of an unsolicited tipoff of inside information: he was not the passive recipient of inside information, nor was he a true insider. But his conduct in obtaining the Pitch Deck was relevantly indistinguishable from being a true insider in that he had access of a kind that a true insider would be expected to have. However, the evidence does not disclose how Mr Forrest was able to find the email to which the Pitch Deck was attached.

73 To the extent that Mr Forrest's conduct can fairly be characterised as opportunistic, that is confined to actually obtaining the Pitch Deck, and even then, only in the sense that he seized an opportunity that arose to find and photograph it. Despite this, it was accepted that access to Mr Cole's computer and email on this occasion and for this purpose was unauthorised. Therefore, I am left with the bare fact of Mr Forrest having obtained the Pitch Deck deliberately and dishonestly, and then having put it to valuable use as information that was not generally available to other investors and would-be investors in Platinum. What then followed in relation

to the use of that information was plainly premeditated, even if it cannot be known how far in advance.

74 I am, however, satisfied beyond reasonable doubt that, by the time Mr Forrest spoke to Ms Sood on 28 August 2024, a relatively short time after obtaining the Pitch Deck, he must have carefully planned, at least in general terms, how he was going to use the inside information to maximum effect. This must have included how to increase its value by his communications with her, which resulted in her becoming aware of Regal's plan and the AFR publishing her article about the proposed acquisition. Mr Forrest was thereby able to influence when the inside information became generally available, so as to influence the share price, in a way that was otherwise unlikely to have been possible. Although the evidence does not contain all the detail of how that was carried out, it is clear that Mr Forrest sought to avoid a paper trail in his communications with Ms Sood, as he refused to "*tell*" her details about the story over WhatsApp and insisted that he had to "*show her*" and "*see [her] in person*", although there is no evidence that this additional step was ever taken.

75 It follows that, in the execution of the second insider trading offence there had to have been a considerable degree of premeditation and contemplation prior to the offending conduct itself of procuring the buying of the shares while in possession of inside information, including the additional inside information, especially in relation to Mr Leary and Jatam's trades, given their close temporal proximity.

76 While the share purchases themselves were not sophisticated, being apparently straightforward, in light of Mr Forrest's stated motivation I readily infer that he conducted the trades in his own name to enhance his reputation as a share trader, including his ability to assess the short-term future share price, so as to give a false impression of the basis for his true ability, and related factors such as skill and diligence. I am unable to accept that procuring others to trade was overtly not directed to avoiding detection, but that does not seem to matter much, because I readily infer that this was designed to add to demand for Platinum shares, and presumably form part of the process of enhancing his reputation with those clients, and, it would seem, getting collateral benefits such as commissions, at least in relation to Mr Mizzi and Jatam's trades. It is plain that he used his skills, training and experience to be able to take advantage of the inside information and engage in both forms of insider trading (both directly and through procuring like conduct by others).

77 I am also unable to accept that the extent of the breach of trust involved in obtaining and using the Pitch Deck information was in any way lessened by the way in which this took place. The breach of trust cannot be downplayed because Mr Cole's computer was accessed only once, especially when regard is had to the high quality of the information obtained from the Pitch Deck. Mr Forrest obtained specific proposed takeover information which allowed him to plan and execute the trading that followed, and enabled him to procure share purchases by the other three.

78 I do not accept that there is any real mitigation to be had in the duration of the offending not extending over any substantial period of time. The circumstances rather than the criminality dictated how long it all took. Mr Forrest had a window of up to a month between when he accessed the Pitch Deck on 23 August 2024, and when the announcement was going to be made, planned to be by the end of September 2024. The time period over which the trades took place, being several weeks, was ample time to reconsider and desist, or, instead to persist. I infer that he took the opportunity to accelerate the process, but even if that is not so, the period of weeks rather than something longer does not operate as any meaningful mitigation.

79 As to the profit that Mr Forrest made himself of just over $300,000 and the lesser gains made by the other three traders that he procured to buy shares, while that is relevant, I do not consider that this is the best or dominant factor to take into account when assessing Mr Forrest's criminality. Far more important is the very substantial investment that Mr Forrest made of over $2.6 million. It can readily be seen that the level of profit was a matter of happenstance rather than design on the part of Mr Forrest or any of the other investors. In the case of Mr Forrest, without any change in his behaviour, his profit could have been, for example, a third of what it was (about $100,000), or three times what it was (approaching or even exceeding $1 million). It all depended on the market reaction to Regal's proposal in relation to Platinum becoming known to the share market participants by becoming generally available and ended up being quite a modest reaction of around 12.5%.

80 What matters more in the assessment of Mr Forrest's criminality is the size of his investment and his endeavours to maximise the return that would take place to the extent that he could influence that, including by encouraging demand for Platinum shares and by facilitating the publication of information that he must have known, and intended, would boost both the demand for, and the price of, Platinum shares. The description that Mr Forrest gives to his investment as being not insignificant tends to downplay his criminality.

81 It is also necessary to have due regard to the fact that greater criminality is involved with rolled up charges, as described in the quote from *Glynatsis* above at [40]. In the case of the first insider trading offence, that is significant, although plainly enough the eight individual offences charged as one were part of a course of conduct, to be taken into account generally, and also in the application of the totality principle.

82 While the further information that Mr Forrest effectively created by his communications with Ms Sood as to a forthcoming article to be published by the AFR is described in the ASOF as additional inside information which he had been instrumental in creating, it is important to recognise the role that this information played in relation to the evident overall strategy. It has the effect of elevating the overall criminality.

83 A further and important measure of the criminality involved is that Mr Forrest denied having any inside information when voluntarily interviewed by police on 7 November 2024, even though a search warrant had been executed and his mobile phone had been seized. He falsely asserted that his decision to trade in Platinum shares was based only on publicly available information.

84 Overall, the objective seriousness of the insider trading offending was significant and warrants an overall sentence that includes a limited measure of specific deterrence and a substantial measure of general deterrence, affected by the subjective features considered below.

Other offences to be taken into account: s 16A(2)(b)

85 As referenced by the prosecutor in written submissions, when sentencing for the second insider trading offence, I am required to take into account the financial services licence offence in the s 16BA Schedule. I am guided in that respect by the observations made in ***Attorney General's Application*** *Under s 37 of the Crimes (Sentencing Procedure) Act 1999 No 1 of 2002* [2002] NSWCCA 518; 56 NSWLR 146 at [42] (Spigelman CJ), which Mr Forrest accepts should be applied:

> The position, in my opinion, is that, although a court is sentencing for a particular offence, it takes into account the matters for which guilt has been admitted, with a view to increasing the penalty that would otherwise be appropriate for the particular offence. The Court does so by giving greater weight to two elements which are always material in the sentencing process. The first is the need for personal deterrence, which the commission of the other offences will frequently indicate, ought to be given greater weight by reason of the course of conduct in which the accused has engaged. The second is the community's entitlement to extract retribution for serious offences when there are other offences for which no punishment has in fact been imposed. These elements are entitled to greater weight than they may otherwise be given when

> sentencing for the primary offence. There are matters which limit the extent to which this is so. The express provision in s33(3) referring to the maximum penalty for the primary offence is one. The principle of totality is another.

86 I accept the prosecutor's submission that Mr Forrest's only attempt to obtain an AFSL in July 2024, after he had started providing investment management services early that year and after he was being paid for them, is properly characterised as a striking failure to comply with a regulatory regime directed to protecting the community. It necessarily must carry some weight in the sentencing for the second insider trading offence, but I would not go so far as Mr Forrest suggests to say that any increase in the sentence would be minimal, at least in the sense of being de minimis. Despite this, I do accept that while striking in nature, it is also quite confined and limited, by reason of the schedule offence taking place for nine months and relating to Mr Forrest assisting only a small number of clients with investment advice, the lack of evidence of any bonus payment being made or of any actual harm, and the offending ceasing before any intervention by the authorities. I accept, as Mr Forrest submits in writing, the following propositions:

> a. The offence taken into account is not to be regarded as an offence for which a person has been convicted (s 16BA(10)).
>
> b. The nature and seriousness of the scheduled offence is relevant to determining an appropriate sentence for the offence for which the offender is to be sentenced [citing *Attorney General's Application* at [159] and other like authority].
>
> c. There is no requirement to quantify the effect or specify the sentence that may otherwise had been imposed had there not been scheduled offences – the scheduled offences are only a relevant consideration in the "*instinctive synthesis*" of all the relevant factors [citing *Attorney General's Application* at [159] and other like authority].
>
> d. The fundamental focus for the sentencing court is the primary offence. The sentencing process must not allow the appropriate sentence for the s 16BA offence to determine the overall sentence and then apply modification on account of totality because scheduled offences have been taken into account under s 16BA. Such an approach would lead the court into fundamental legal error [citing *Abbas v R* [2013] NSWCCA 115; 231 A Crim R 413at [22] (Bathurst CJ) and at [256] (Campbell J)].

Loss or damage resulting from the offence: s 16A(2)(e)

87 As the authority considered above makes clear, insider trading is not a victimless crime. There are not only systemic impacts, but the counterparties to each of the impugned share purchases was likely to have been worse off because they either traded, or held off trading, without having the benefit of the inside information that Mr Forrest had. However, this must be considered in a conceptual way, as quantification is not possible. Given that insider trading threatens the

integrity of the share market, the sentence result provides not just general deterrence for would-be offenders, but also gives some measure of comfort and reassurance for those who trade lawfully that such conduct is being addressed and taken seriously. In that sense, the sentences to be imposed have a retributive quality.

Guilty plea: s 16A(2)(g)

88 Had Mr Forrest defended the charges, conviction was not certain because of the vagaries of complicated white-collar offences, but it was highly probable. The main mitigation flowing from the guilty pleas is the very early stage at which they were entered in court. The guilty pleas were not only indicated and agreed to before the charges were laid, which I infer was itself part of a charge negotiation, but also before any brief of evidence had been compiled. While I have no doubt that the final brief of evidence would have produced a very strong prosecution case, that would have taken a considerable amount of time and would have required significant resources from ASIC, the CDPP and possibly further involvement of the AFP.

89 Insider trading is a complicated and technical offence. All of those resources were freed to deal with other cases. There was also the saving of court time. However, care must be taken in giving too much weight to this, lest it amount to treating Mr Forrest more favourably than someone who exercises their undoubted right to compel the case against them to be proven beyond reasonable doubt. The end result is that I give real weight to the facilitation of the course of justice reflected in Mr Forrest's guilty pleas being entered at the very earliest possible time, and the saving of resources that this entailed. In the converse, the sentence that would have been imposed following guilty verdicts after a trial would have been greater than a sentence which is appropriate to impose upon Mr Forrest in these circumstances.

90 The real possibility of Mr Forrest successfully defending the insider trading charges was not strong, although conviction can never be assured for such complicated offences. Despite initial denials of possessing inside information, he was caught red-handed. He had on his mobile phone photographs of PowerPoint presentations containing detailed information about a proposal to merge Platinum with a company led by his effective employer, obtained by him from that effective employer. Those photographs were not volunteered but obtained by investigative action, including in particular by the execution of a search warrant. This too counts against treating the guilty pleas of themselves as evidencing much at all in the way of contrition or remorse.

91 I readily infer beyond reasonable doubt that Mr Forrest deleted or caused to be deleted the Pitch Deck on his mobile phone and that he must have thought that, as a result, those photographs would not be detected. He was mistaken in that regard, and once the data comprising the nine of the 11 pages of the deleted Pitch Deck had been recovered, a guilty plea to the insider trading charges was all but inevitable, even if the likelihood of a conviction was not quite as high as that, given the complexity and difficulty in prosecuting offences like this.

92 As outlined above, the legal process of prosecution and proof beyond reasonable doubt would have taken court and prosecutor time and resources, such that Mr Forrest seeks a utilitarian discount for avoiding that impost on the public purse.

93 Offences of this nature are difficult to detect, investigate and successfully prosecute. That is why general deterrence is so important. Things can go wrong with even the strongest of prosecution cases. To refer to offences of this nature, with evidence of this kind, as inevitably resulting in conviction may be more the product of optimism than experience. There must be a real incentive to enter guilty pleas at a very early stage of the process, which has the greatest utilitarian and likely rehabilitation benefits. Giving too much of a discount for a late guilty plea may be distinctly problematic as, by then, it tends to de facto sanction those who exercise their right to trial and discourages the more valuable early guilty pleas. Taking utilitarian benefits too far also risks sacrificing principle for expediency.

94 Mr Forrest's guilty plea was made very early and will be given significant weight. However, I do not consider it necessary or appropriate to identify a specific percentage to this feature. It is simply an important part of the instinctive synthesis of all of the inputs to the sentences arrived at.

Cooperation by Mr Forrest: s 16A(2)(h)

95 This aspect addresses features other than Mr Forrest's guilty pleas, which have already been considered and assessed. Beyond that, he cooperated by admissions by way of the ASOF, which has been accepted to be of significant value to ASIC.

96 Mr Forrest has additionally offered to forfeit the profits derived from the offending, with orders to that effect being provided to the Court, consenting to forfeiture of the proceeds of the offending by way of an order under the *Proceeds of Crime Act 2002* (Cth). Section 320 of that Act constrains the use that may be made of such an order, as follows:

Effect of the confiscation scheme on sentencing

A court passing sentence on a person in respect of the person's conviction of an indictable offence:

(a) may have regard to any cooperation by the person in resolving any action taken against the person under this Act; and

(b) must not have regard to any forfeiture order that relates to the offence, to the extent that the order forfeits proceeds of the offence; and

(c) must have regard to the forfeiture order to the extent that the order forfeits any other property; and

(d) must not have regard to any pecuniary penalty order, or any *literary proceeds order, that relates to the offence.

97 I therefore can and will take into account the agreement to forfeit the profits of the insider trading under s 16A(2)(h) generally and under s 320(a) in relation to any forfeiture order, but do not take into account the forfeiture order itself by reason of s 320(b).

Character, age, antecedents, background & prior good character: s 16A(2)(m), (ma)

98 I do not accept the prosecutor's submission that s 16A(ma) is engaged, because I am not satisfied that is it correct to characterise Mr Forrest as having used his standing in the community to aid in the commission of the offences, so as to aggravate the seriousness of that offending.

99 I accept that I can take into account that Mr Forrest has no relevant prior convictions, and that he was hitherto a person of good character, but that has a limited role to play in this sentencing exercise as made clear by the authority on that topic considered earlier in these reasons. His age is unexceptional, being neither of tender years, nor elderly. He is within the typical age range or group for this sort of offending.

Contrition and prospects of rehabilitation: s 16A(2)(f) and (n)

100 I have already indicated that I accept that Mr Forrest is contrite for what he has done, and not merely regretful because of the severe adverse consequences that being caught and prosecuted will have on him and his immediate and extended family. I think it quite unlikely that he will reoffend, especially as a component of the sentence to be imposed is directed to specific deterrence. I also note the community corrections officer's assessment of Mr Forrest as having a "*low risk of reoffending*", which has not been questioned by the prosecution. He is highly likely to be a good candidate for rehabilitation. I think it highly likely that he has learnt his lesson, albeit the hard way.

Impact of sentence on dependents: s 16A(2)(p)

101 I have no reason to doubt that there will be an adverse effect on Mr Forrest's dependents arising from the sentence to be imposed upon him – his wife, his young sons and his mother, and perhaps also his sister whom I have not heard much about. However, the evidence as to the extent of that impact has been less than ideal for the reasons set out when considering that evidence. In particular, I am not able to assess the extent of the financial impact of incarceration for the reasons already given. I do, however, accept that the physical and emotional support that he will not be able to give to his wife, his young sons, his mother, and probably also his sister will be sorely missed. In a very real sense, they will be paying a price for his conduct.

102 While I accept that I can, must and will take into account the impact that the sentences to be imposed on Mr Forrest will have on his dependents, its weight is not significant enough to reduce those sentences in any substantial way, especially as to the head sentence. They have more work do in relation to the non-parole period, especially in relation to Mr Forrest's young sons, as considered in more detail below.

Specific and general deterrence, and need for adequate punishment: s 16A(2)(j), (ja) & (k)

103 An important consideration in determining the sentences to be imposed is general deterrence. The interests of the community demand no less. Specific deterrence still has a role to play, but to a much lesser extent. This was serious and pernicious offending. I am satisfied, as required by s 17A of the *Crimes Act*, that, having considered all other available sentences, that nothing less than sentences of imprisonment, with full time incarceration, is appropriate in all the circumstances. In particular, I adopt and apply the observation of Hoeben CJ at CL in *Glynatsis* at [74] that an intensive correction order does not adequately satisfy the need for general deterrence, especially given the nature and seriousness of Mr Forrest's offending. That is especially so given that the maximum penalty applicable at the time *Glynatsis* was decided was 5 years' imprisonment, and that has since tripled to 15 years' imprisonment.

104 This conclusion is not affected by Mr Forrest's lack of any relevant prior conviction, nor by the automatic disqualification from being involved in the management of a corporation for 5 years under s 206B of the *Corporations Act*, although both will be taken into account. I note also the undertaking that Mr Forrest has given to the Court that he will not, and will procure that Sublime and any other company in which he or his wife have a controlling interest will not, apply for an AFSL for 5 years either (noting that there is a fit and proper person

requirement for such a licence in any event, with the disqualification and conviction being required to be taken into account).

The sentence to be imposed

105 It is common ground that Mr Forrest must be sentenced to imprisonment for the offences he has committed. However, he seeks an outcome by which he will not serve any part of that sentence in prison, and does not identify any particular duration of sentence that is appropriate. I note however that the statutory limitations on making an intensive correction order have the effect of capping the total sentence that can be imposed to three years imprisonment. The prosecutor, being mindful of the strict prohibition on all prosecutors for federal offences urging imprisonment of any identified duration, contends that a period of actual incarceration is required in all the circumstances.

106 This has not been an easy sentencing exercise. However, I am satisfied that Mr Forrest's case for there to be no time in prison at all has not been established and in any event, an overall sentence of only three years' imprisonment, being the overall maximum sentence for an ICO to be available, falls well short of what is required to meet the threshold of being appropriate in all the circumstances. I am satisfied that nothing less than a substantial period of imprisonment is required. To a limited extent, that is also called for upon the basis of a residual need for specific deterrence, even though, upon careful reflection, I view the risk of reoffending to be low, but not non-existent. A particularly important consideration in this case is general deterrence, supported by the authority considered above.

107 I have weighed up all of the competing considerations, and expressed conclusions as to those of most importance when that has been possible. For such serious offending to be engaged in, and not result in a custodial sentence, would almost entirely defeat and deny the critical need for general deterrence; it would not really deter those contemplating offending if the risk of significant sanction was so little relative to the substantial gains able to be made. The message that this would send out is that such offending would not result in a significant curial sanction, provided that there was no more than an early guilty plea, a clean prior record, a sound subjective case, and an agreement not to resist a disgorging of the profit. The guilty plea has a weighty part to play in the duration of the sentence to be imposed but has a much lesser role to play on the way it is to be served.

108 A very important competing consideration is the substantial subjective case that Mr Forrest has advanced, especially in terms of his risk of reoffending, and what I find to be a severe impact

on his dependents, not in terms of proven real financial need, which has not been satisfactorily addressed, but rather in terms of his physical absence while incarcerated. While that does not absolve him from serving actual time in prison, it has a significant impact on the length of time that he should be required to serve before being eligible to be released on parole. Of course, time on parole is still part of serving a sentence of imprisonment. It is just that the remaining part of the sentence of imprisonment is served in the community, provided that the conditions of parole are complied with.

109 I am particularly concerned about the impact that Mr Forrest's absence is going to have on his young sons, now aged 5 and 8. I acknowledge the generally recognised importance of the earlier developmental stages of such young children, but note it is also generally recognised that this becomes especially critical as children grow into adolescence and the teenage, young person and young adult years. The World Health Organisation defines adolescence as occurring between 10 and 19 years of age generally, with the key developments occurring from puberty, which is typically from about 11 years of age. I do not consider that there is anything controversial about those well-known statistics. I consider it critical to the long-term wellbeing of Mr Forrest's sons that he is able to return to being with them as soon as possible, ideally before adolescence has really got underway for his older son, and before his younger son has reached that stage. It is fortunate that an appropriate sentence in all the circumstances allows this outcome to be achieved, as described below.

110 A still significant, but less substantial consideration is the impact on Mr Forrest's wife and mother. In the case of his wife, a significant part of the impact is that she will need to cope with two boys in the years leading to adolescence on her own. In the case of his mother, who is 67 years of age, he will not be able to provide support to her in some of the daily tasks that she finds difficult.

111 What I am required to do is arrive at a sentence, both as to the head sentence and the non-parole period, that is of a severity that is appropriate in all the circumstances: *Hili* at [23]-[45], but especially at [24] and [44] (French CJ, Gummow, Hayne, Crennan, Kiefel and Bell JJ). There is no fixed ratio required between the overall head sentence and the non-parole period, but it too must be appropriate in all the circumstances.

112 I consider that the resolution of the complex and in places conflicting considerations is best met not by lowering the overall head sentence below the level necessary to advance, in particular, the objective of general deterrence, but rather to impose as short a non-parole period

as I consider is properly available. In this case, I consider that a 50% non-parole period is appropriate and sufficiently severe.

113 While there is a significant overlap between the two insider trading offences, there were important differences as well. Most importantly, the first insider trading offence was committed by Mr Forrest himself with his own investment (albeit that the source of those funds was not identified) and resulted in personal profit, while the second insider trading offence involved additional inside information and procuring others to trade with their own investments resulting in their own prospective gains, some of which were realised. To make the two sentences wholly concurrent would fail to recognise those and other distinctions; while to make the two sentences wholly consecutive would fail to recognise the common features and overlapping conduct.

114 The final step is to reduce all of those considerations into a single number for each insider trading offence, by the process of instinctive synthesis. In doing so, I have had regard to concurrency and accumulation and to the principle of totality as a final review and check on the overall sentence to be imposed.

115 The result that I have arrived at is that Mr Forrest should be sentenced to 5 years' imprisonment for the first insider trading offence and to 2 years' imprisonment for the second insider trading offence, with one year of consecutiveness between the two sentences. In reaching that conclusion, I have had regard to the sentencing considerations addressed in some detail above.

116 That result takes into account totality. Without totality, I would have:

(a) made the second sentence three years rather than two years, having regard to procuring three others to commit serious offences; and

(b) telescoped the second sentence of that longer duration upon the first by a period of two years.

117 The result is an overall head sentence of imprisonment for 6 years with a non-parole period of 3 years.

I certify that the preceding one hundred and seventeen (117) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice Bromwich.

Associate:

Dated: 23 January 2026