



Vizard gives ASIC a lesson in media management

The corporate regulator fumbled the message in the Steve Vizard case, writes **Ian Ramsay**.

It has not been a good week for the Australian Securities and Investments Commission. Did ASIC go soft on Steve Vizard? Did the regulator not pursue him for insider trading because he is part of the Melbourne establishment or because of his political connections? Has ASIC sent a message that insider trading laws will not be enforced against certain people?

These are the allegations levelled against ASIC, an odd situation for our corporate regulator. We usually expect it to make allegations of improper conduct instead of receive them.

In my view, the answer to all three questions is no. The outcome of the negotiations between ASIC and Vizard's lawyers is that although he will not face the prospect of prison, he acknowledges serious breaches of his duties as a director of Telstra and faces financial penalties of up to \$600,000 and being banned from managing companies for a period of time determined by the court. At the same time, ASIC does not have the uncertainty of not knowing whether a jury would convict Vizard.

ASIC has a mixed track record prosecuting people for insider trading — less than 50 per cent of the criminal cases it brings for insider trading are successful. Its success rate in enforcing other parts of our corporate laws is much higher.

The reasons for this mixed success in the area of insider trading include: the complexity of the law and its vagueness (the insider-trading laws are about nine pages in

length and have been criticised by

judges for the fact they are difficult to interpret); the difficulty of investigating some insider trading (which is often well hidden by those who do it); and in criminal cases there is a high standard of proof (beyond reasonable doubt).

So assuming that ASIC didn't have the proof to sustain a criminal conviction and that it had exhausted all possible avenues to obtain that evidence, then the outcome with Vizard is reasonable.

But we do need to ask how it is that ASIC has got itself into this situation where its reputation has

been badly damaged. There can be no doubt that ASIC is partly at fault. The media release it issued on July 4 contained volatile facts — a very prominent business person, with strong political connections, engages in three cases of what seems to be insider trading while he is a director of one of the country's most high profile companies, Telstra.

Vizard is very conveniently in France when the furore erupts because he knows the date ASIC will be filing the proceedings against him in court and issuing its media release. But what Vizard does do is have his public relations people hit

the phones the day the ASIC media release is published to let everyone know his side of the story.

While the furore erupts, ASIC in its media release states that it will not make any further comment. It maintains this position for several days until the weight of public pressure is too much and it then releases more information. This pressure includes front page newspaper articles, editorials in major newspapers, comments from politicians calling for explanations from ASIC and extensive discussion on talkback radio programs.

ASIC should have handled this

better, by being more transparent in its media release and providing more information.

First, the actual decision not to prosecute Vizard was made not by ASIC but by the Director of Public Prosecutions. The DPP independently reviews the results of investigations brought to it by regulators such as ASIC and then makes a decision on whether it will prosecute. This important information was missing from the ASIC media release.

Second, what Vizard did looked like insider trading (taking confidential, price-sensitive information he obtained as a director of Telstra and using it to trade shares). ASIC should have indicated why it decided to pursue Vizard for breaches of director's duties and not insider trading. Some reasons were subsequently made public by ASIC, but this was too late.

Third, it is unclear whether ASIC is continuing its investigation into Vizard's share trading. Is the settlement with Vizard the end of its inquiries?

Additional disclosure by ASIC would have saved it some reputational damage and helped maintain confidence in it as our corporate regulator — and it is an effective regulator, with many talented staff.

But given the volatile information released by it on July 4, ASIC needed to ensure that it provided as much helpful and accurate information as possible on that day. And it needed a strategy to deal with the inevitable fallout. It didn't have one.

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Steve Vizard handled the media expertly while the corporate regulator stonewalled.

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