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Agreed Statement of Facts

I. Introduction to Australian Takeovers Law

1. Australian takeovers law regulates transactions that may affect the control of:

- (a) listed companies;
- (b) managed investment schemes; and
- (c) unlisted bodies with more than 50 members.

The primary source of this law is Chapter 6 of the *Corporations Act 2001* (Cth) ('**the Act**').

2. All references to section numbers in this document are to provisions of the Act.

3. Section 602 outlines the purposes of Australia's takeover's regime, which is to ensure that:

- (a) the acquisition of control takes place in an efficient, competitive and informed market;
- (b) the holders of shares and interests, and the directors of the company or body, or the responsible entity:
 - (i) know the identity of any person who proposes to acquire a substantial interest in the company, body or scheme;
 - (ii) have a reasonable time to consider the proposal; and
 - (iii) are given enough information to enable them to assess the merits of the proposal;
- (c) as far as practicable, the holders of shares and interests have a reasonable and equal opportunity to participate in any benefits accruing to the holders through any proposal under which a person would acquire a substantial interest in the company, body or scheme; and
- (d) an appropriate procedure is followed as a preliminary to compulsory acquisition under Pt 6A.1.

4. The fundamental principles underpinning Australia's takeovers regime are that:

- (a) Investors know the identity of those who propose to acquire control of an entity;
- (b) Shareholders are given enough information about a proposed takeover to enable them to make an informed decision about the proposal and participate in the

benefits that may flow to them as a result of a takeover, for example, the payment to them of a control premium¹; and

- (c) The acquisition of control of one entity by another takes place in an open and orderly way.

General prohibition

5. Section 606 (1) prohibits a person from acquiring a relevant interest in issued voting shares through a transaction if, as a consequence of that acquisition, a person or someone else's voting power in the relevant entity increases:
 - (a) from 20% or below to more than 20% (s 606(c)(i)); or
 - (b) from a starting point that is above 20% and below 90% (s 606(c)(ii)).
6. Breach of s 606(1) is an offence of absolute liability (s606 (4A)).
7. Section 611 sets out a number of exceptions to the prohibitions in section 606(1), including:
 - (a) where an acquisition results from the acceptance of a takeover bid (s611 (Item 1));
 - (b) where an acquisition is approved by shareholders or members who are not associated with the proposed acquirer (s 611 (Item 7)); and
 - (c) where, as part of a rights issue, an offer is made by the company to every existing shareholder on the same terms to allow them to acquire shares in proportion to their current shareholding (s 611 (Item 10)).

The Rights Issue Exception to the s 606 prohibition

8. In regards to the s 611 (Item 10) rights issue exception, it may be impractical for a company to avail itself of s 611 (Item 10) which requires an offer to be made on the same terms to all shareholders, if the company has foreign shareholders. This is because offers made to foreign shareholders may incur additional costs if the offer is required to comply with foreign securities laws. Accordingly, making the offer on the same terms to both domestic and foreign shareholders may be problematic.
9. To overcome this difficulty, section 615 permits a company to rely on the s 611 (Item 10) exception if the company appoints a nominee to act on behalf of foreign shareholders. In this scenario, the shares issued under a rights issue (that would otherwise be issued to foreign holders who accept the offer) would be issued to the nominee who would then sell the shares and distribute the proceeds to each of the foreign shareholders.

¹ A control premium is an amount that a buyer is willing to pay over the current market price of a publically traded company in order to acquire a controlling stake in the company. It is expected that a 'control premium' will be paid by the bidder in a takeover to shareholders in the target company in order to acquire their shares.

10. In order to avail itself of the s 611 (Item 10) exception under s 615, a nominee appointed under s 615 must be approved by ASIC.
11. As part of the Nominee approval process, ASIC will review the structure of the proposed rights issue and its impact on control of the company. This is to ensure that the proposed rights issue complies with the law and is not used as a tool to enable a company to gain control of another company surreptitiously, or so as to avoid obligations under the takeover regime, including offering any control premium to all shareholders. Where ASIC is not satisfied with the circumstances surrounding the acquisition of control by one company over another company, ASIC may apply to the Takeovers Panel for a finding of unacceptable circumstances.
12. A company cannot rely on the s 611 (Item 10) exception for a rights issue involving foreign shareholders if an ASIC approved nominee is not appointed.

Substantial holding disclosure

13. A person is considered to have a 'substantial holding'² if they (or an associate) have a relevant interest in 5% or more of the total voting shares in a listed company.
14. Section 671B (1) (a) requires a person to lodge a substantial holding notice with the company and the Australian Securities Exchange ('ASX') when they 'begin to have, or cease to have, a substantial holding'. The information must be provided within two business days after the person becomes aware of the information regarding their substantial holding (s671B (6)).
15. Form 603 must be lodged when a person becomes an 'Initial Substantial Shareholder' (under s 671B of the Act) and Form 604 must be lodged when there is a 'Change of Interests of Substantial Shareholder' (under s 671B of the Act).
16. Further notices disclosing any subsequent movement of at least 1% (from the date of the last disclosure) in the substantial holding must also be provided to the company and the ASX (s671B (1) (b)).
17. The principle underpinning the substantial holding disclosure requirements in s671B is to ensure that the market is fully informed of the existence and dealings of persons who may have a significant influence over the direction of a company (ASIC Regulatory Guide 5 at RG 5.281-285).
18. Breach of s 671B (1) is an offence of strict liability (s671B (1A)).

II. Parties

19. AG Financial Limited ('AHA') is engaged in stockbroking and funds management. AHA's stockbroking business provides full service stockbroking to its clients including trading advice and strategy for investments in equities, exchange traded options and

² 'Substantial Holding' is defined in s 9 of the Act

margin lending facilities. AHA first listed on the ASX in May 2007 under the name of "Excelsa Limited" and traded under the ASX code "EXA". On 6 December 2013 Excelsa changed its name to AG Financial Limited. It now trades under the ASX code "AHA".

20. Avestra Asset Management Limited ('**Avestra**') is an unlisted public company. It is licenced under AFSL 305130 to act as a Responsible Entity. Its primary business activity is to act as a Responsible Entity and, in that capacity, provide specialist funds management products for both the wholesale and retail market. It is currently authorised to operate the following registered managed investment schemes:

- Avestra Advantage Fund;
- LCL Capital Absolute Returns Fund
- Pegasus Australian Geared Fund;
- Managed Investment Account Service;
- Excelsa Australian Equity Income Accelerator;
- Maximiser scheme;
- Emergent scheme; and
- Valensworth Fund scheme.

21. Avestra also acts as trustee for a number of regulated but unregistered Managed Investment Schemes, which are only open for investment to wholesale, sophisticated or professional investors, namely:

- Worberg Global Fund;
- Canton Mackenzie Fund;
- Safecrest Capital Fund; and
- FCAP Emerging Growth Fund.

22. Avestra outsources certain aspects of the operations of all these Funds, including the custody of the assets and the administration of the Funds.

23. Avestra derives its revenue from fees charged for acting as Responsible Entity or Trustee of these Funds.

24. At all material times:

- (a) Avestra Holding Pty Ltd ('**Avestra Holdings**') held 50.3% in Avestra; and
- (b) Avestra Capital Pty Ltd ('**Avestra Capital**') was a wholly owned subsidiary of Avestra Holdings.

25. Worberg Global Fund ('**Worberg**'), Avestra Advantage Fund (ARSN 136 421 497) ('**Avestra Advantage**'), Canton Mackenzie Fund ('**Canton Mackenzie**'), Safecrest Capital Fund ('**Safecrest**') and FCAP Emerging Growth Fund ('**FCAP**') are managed investment schemes. The responsible entity for those managed investment schemes is Avestra.

26. At all material times, Avestra had a relevant interest³ in the securities acquired by Worberg, Avestra Advantage, Canton Mackenzie, Safecrest Capital and FCAP because Avestra:

- (a) Held the securities on behalf of those entities;
- (b) Had the power to control the voting rights attached to those securities; and/or
- (c) Had the power to control the disposal of those securities.

III. Summary of Offences committed by Avestra under section 606 and section 671B of the *Corporations Act 2001*

Acquisitions in breach of s 606 of the Act

27. In March 2013 Avestra acquired a relevant interest in 22.17% of the issued shares in AHA, in breach of section 606.
28. In May 2013 Avestra increased its relevant interest in AHA (through a private placement) from 22.17% to 31.82%, in breach of s 606.
29. In June 2013 AHA commenced a Rights Issue, announcing to the ASX its intention to appoint a nominee for its foreign shareholders, thereby purporting to rely on the s 611 (Item 10) exception to a *prima facie* breach of s 606. Avestra did not in fact obtain ASIC approval under s 615; a prerequisite for the appointment of a valid nominee under s 615, and reliance on the s 611 (Item 10) exception.
30. Given that s 611 (Item 10) did not apply, and no other exceptions under 611 applied to the acquisitions in the period June to August 2013, Avestra's increase in its voting power in AHA from 31.82% to 55.96% during that period constituted multiple breaches of s 606(1).
31. As a result of the transactions referred to above (and in addition to transactions referred to 55(i) and (j) (below), Avestra acquired a relevant interest in AHA shares that increased its voting power to 56.28%. In doing so, Avestra did not comply with the requirements of Chapter 6, including for example, by making a takeover bid under which a control premium could be expected to be paid and the other principles underpinning Chapter 6 observed.

Failure to provide accurate Substantial Holding Information, in breach of Section 671B

32. Following the acquisitions referred to in paragraphs 36, 44, 55 (below) Avestra was required to provide substantial holding information to the ASX and AHA within two business days of Avestra becoming aware of information regarding the change to its substantial shareholding position.

³ 'Relevant interest' – as defined by s 608 of the Act

33. Avestra failed to provide correct substantial holding information to the ASX and AHA in accordance with the provisions of s 671B. As a consequence, Avestra contravened s 671B in regards to the acquisitions referred to in paragraphs 36, 44, 55 (below).
34. While some substantial holder notices in respect of the individual funds were lodged, those notices were often late, were sometimes not lodged at all and did not refer to or consolidate Avestra's total voting power in AHA. As a consequence, the market was not informed of the accumulation of Avestra's voting interest in (and control of) AHA.

IV. Details of Avestra's breaches of the *Corporations Act 2001*

March 2013 – Acquisition and Substantial Holding Notices - (First and Second Offence)

35. On 21 March 2013, AHA's former Chief Executive Officer, Mr. Peter Spann ('**Spann**'), sold his entire AHA shareholding of 13,328,542 shares, being 46.17% of AHA.
36. Of those 13,328,542 shares, Avestra on behalf of Worberg and Canton MacKenzie acquired 2,000,000 shares and 4,400,000 shares, respectively. Canton McKenzie subsequently sold 280,000 on 25 March 2013, on market.
37. Spann lodged a Form 605 "*Notice of Ceasing to be a Substantial Holder*" with the ASX on 21 March 2013.
38. As a result, Avestra (as responsible entity for Worberg and Canton Mackenzie) acquired a relevant interest in AHA with the effect that its voting power in AHA increased from zero to 22.17%.
39. Avestra's AHA acquisition was not covered by a s 611 exception and accordingly, Avestra breached s 606(1) of the Act (**the First Offence**).
40. On 5 April 2013 Worberg and Canton Mackenzie lodged Forms 603 "*Notice of Initial Substantial Holder*" indicating that those funds had become substantial holders of 6.93% (2,000,000 shares) and 14.27% (4,120,000 shares) respectively, of AHA shares.
41. The form and content of the forms lodged on 5 April 2013 were defective in that:
 - (a) Avestra was not listed in the forms as 'substantial holder' and 'registered holder' of the AHA shares. Avestra had acquired a relevant interest through its acquisitions of AHA shares on behalf of Worberg and Canton Mackenzie; and
 - (b) The forms were not lodged with the ASX within 2 days of the acquisition as required by s 671B (6).
42. The information (referred to in s 671B (3) of the Act) was not correctly provided by Avestra on or about 26 March 2013 as required by s 671B (1) (a) and accordingly, Avestra breached section 671B (1) of the Act (**the Second Offence**).

43. As a consequence of Avestra's breach, the market was not informed that Avestra had acquired a substantial AHA holding, and that it was in a position to exercise significant control over AHA.

May 2013 – Private Placement and Substantial Holding Notices (Third and Fourth Offences)

44. On 30 May 2013 AHA announced to the market that it would issue 4,200,000 new shares (at an issue price of \$0.02) to Avestra Advantage as part of a private placement. The 4,200,000 shares were subsequently issued to Avestra, on behalf of Avestra Advantage ('**the Placement**').

45. As a result of the Placement, Avestra acquired relevant interests in AHA shares with the effect that its voting power in AHA increased from 22.17% to 31.82%.

46. Avestra's acquisition was not covered by a s 611 exception, and accordingly, Avestra breached s 606(1) of the Act (**the Third Offence**).

47. In breach of s 671B (1) of the Act, on or about 3 June 2013 Avestra did not lodge with the ASX, in the name of Avestra or any party, a substantial holding notice (**the Fourth Offence**).

48. As a consequence of Avestra's breach, the market was not informed of an increase of more than 1% (there was in fact an increase of 9.65%) in Avestra's interest in, and control of, AHA.

June 2013 – Rights Issue

49. On 3 June 2013, AHA announced to the ASX that it would undertake a rights issue of up to 140,000,000 shares to be issued at \$0.02 ('**the Rights Issue**'). There was a further announcement on 4 June 2013 that clarified matters announced on 3 June 2013 ('**the 4 June Announcement**').

50. The offer announced on 3 June 2013 was renounceable⁴, underwritten by Avestra Holdings, and with no shortfall facility⁵.

51. The shares were acquired by nominees or custodians for the various funds in two ways under the Rights issue:

- (a) through participation by the managed investment schemes (as existing shareholders); or

⁴ That is, shareholders could sell their rights to acquire additional shares under the rights issue.

⁵ A shortfall facility is a facility which would allow shareholders to subscribe for shares not taken up by other shareholders under the rights issue before those shares would be taken up by the underwriter. This would operate in practice to mitigate the control impacts of that underwriting.

(b) through the underwriter (Avestra Holdings) allocating shortfall shares to the managed investment schemes.

52. The offer to shareholders (contained in a letter to shareholders dated 4 June 2013) stated that AHA was:

"in the process of appointing a nominee in accordance with ASX Listing Rule 7.7.1(c) and section 615 of the Corporations Act 2001 (Cth) to sell the rights to the New Shares that would otherwise have been offered to Ineligible Shareholders (Excluded Rights). The Nominee will sell the Excluded Rights but will only sell the rights if there is a viable market for them and if a premium over the expense of the sale can be obtained. Any such sale will be at the best price reasonably practicable in the circumstances."

53. The reference to "Ineligible Shareholders" in the 4 June letter is a reference to AHA's non- Australian and New Zealand shareholders.

54. Notwithstanding its announced intention to appoint a nominee, AHA did not apply to ASIC under s 615 of the Act for approval for the appointment of a nominee and accordingly, a nominee was not appointed in accordance with the Act. Accordingly the exception in s 611 (item 10) did not apply to the Rights Issue.

s 606 transactions June – August 2013

55. During the period 24 June 2013 to 2 August 2013, Avestra increased its interest in AHA (through acquisitions under the Rights Issue and through separate acquisitions) by entities for which Avestra was the responsible entity as follows:

- (a) On 24 June 2013 Avestra, on behalf of Worberg, acquired 33,527 AHA shares on market. As a result, Avestra acquired a relevant interest in those AHA shares, with the effect that Avestra's voting power in AHA increased from 31.82% to 31.92%;
- (b) On 27 June 2013 Avestra, on behalf of Worberg, acquired 13,850 AHA shares on market. As a result, Avestra acquired a relevant interest in those AHA shares with the effect that Avestra's voting power in AHA increased from 31.92% to 31.96%;
- (c) On 3 July 2013 Avestra, on behalf of Safecrest, acquired 500,000 AHA shares on market. As a result, Avestra acquired a relevant interest in those AHA shares with the effect that Avestra's voting power in AHA increased from 31.96% to 33.47%;
- (d) On 4 July 2013 Avestra, on behalf of Safecrest, acquired 500,000 AHA shares on market. As a result, Avestra acquired a relevant interest in those AHA shares with the effect that Avestra's voting power in AHA increased from 33.47% to 34.98%;
- (e) On or about 12 July 2013, Avestra acquired 68,560,000 AHA shares by way of the Rights issue, on behalf of (respectively) Worberg (16,600,000), Canton Mackenzie (35,260,000) and Avestra Advantage (16,700,000). As a result, Avestra acquired a relevant interest in those AHA shares with the effect that Avestra's voting power in AHA increased from 34.98% to 46.30%;

- (f) On 16 July 2013 Avestra, on behalf of Worberg, acquired 100,000 AHA shares on market. As a result, Avestra acquired a relevant interest in those AHA shares with the effect that Avestra's voting power in AHA increased from 46.30% to 46.36%;
- (g) On 17 July 2013 Avestra, on behalf of Worberg, acquired 4,612,500 AHA shares through the Rights issue. As a result, Avestra acquired a relevant interest in those AHA shares with the effect that Avestra's voting power in AHA increased from 46.36% to 49.02% ;
- (h) On 19 July 2013 Avestra acquired 12,000,000 AHA shares on behalf of Canton McKenzie (3,500,000) and Safecrest (7,500,000) under the Rights issue; and on market on behalf of FCAP (1,000,000). As a result, Avestra acquired a relevant interest in those AHA shares with the effect that Avestra's voting power in AHA increased from 49.02% to 55.96% ;
- (i) On 1 August 2013 Avestra, on behalf of Safecrest, acquired 500,000 AHA shares off market. As a result, Avestra acquired a relevant interest in those AHA shares with the effect that Avestra's voting power in AHA increased from 55.96% to 56.24%; and
- (j) On 2 August 2013, Avestra, on behalf of Worberg, acquired 60,381 AHA shares on market. As a result, Avestra acquired a relevant interest in those AHA shares with the effect that Avestra's voting power in AHA increased from 56.24% to 56.28%;

56. The Rights issue exception under s 611(Item 10) did not apply and no other s 611 exceptions applied to Avestra's acquisitions during the period June to August 2013. Therefore, Avestra's acquisitions (set out in 55 (a) – (j) above) were made in breach of s 606(1) of the Act ('**the Fifth Offence**').

57. As a consequence of a s 615 application to ASIC not being made by Avestra, ASIC did not review the terms of the Rights Issue. Had ASIC done so, it may have identified issues with Avestra's proposal, as well as Avestra's contraventions of the Act in March and May/June 2013. ASIC would have consequently been in a position to identify and address Avestra's breaches at an earlier stage, limit subsequent breaches by Avestra and ensure that the market was informed of the identity of the entity controlling AHA.

Defective Substantial Shareholder Notices for Acquisitions during the period July – August 2013

58. On 6 August 2013, Canton Mackenzie lodged a Form 604 Notice of Change of Interests of Substantial Shareholder (under s 671B of the Act) purporting to relate to an acquisition of 41,260,000 AHA shares on 19 July 2013. The Notice was defective in that:

- (a) The acquisitions in fact occurred on 12 and 19 July 2013 and related to acquisitions of 35,260,000 and 3,500,000 shares, respectively;
- (b) It was not lodged within 2 business days of the acquisition; and

- (c) It did not disclose that Avestra's voting power in (and control of) AHA had increased by more than 1% by virtue of the acquisition of the shares.
59. On 6 August 2013, Worberg lodged a Form 604 Notice of Change of Interests of Substantial Shareholder (under s 671B of the Act) purporting to relate to an acquisition of 20,600,000 AHA shares on 19 July 2013. The Notice was defective in that:
- (a) The acquisitions in fact occurred on 24 and 27 June, 12, 16, 17 July and 2 August 2013, and related to the acquisitions of 33,527, 13,850, 16,600,000, 100,000; 4,612,500 and 60,381 (21,420,258 in total) shares respectively.
- (b) It was not lodged within 2 business days of the acquisition; and
- (c) It did not disclose that Avestra's voting power in (and control of) AHA had increased by more than 1% by virtue of the acquisition of the shares.
60. On 6 August 2013, Avestra Advantage lodged a Form 603 Notice of Initial Substantial Shareholder (under s 671B of the Act) purporting to relate to an acquisition of 16,700,000 shares on 19 July 2013. The Notice was defective in that:
- (a) The acquisitions occurred on 25 March, 30 May and 12 July 2013 and related to the acquisitions of 230,000, 4,200,000 and 16,700,000 (21,100,000 in total) shares respectively.
- (b) It was not lodged within 2 business days of the acquisition; and
- (c) A Form 604 Notice (Change of Interests of Substantial Shareholder) ought to have been lodged and ought to have referred to Avestra, the entity whose voting power in (and control of) AHA had increased by more than 1% by virtue of the acquisition of the shares.
61. On 6 August 2013, Safecrest lodged a Form 603 Notice of Initial Substantial Shareholder (under s 671B of the Act) to relate to an acquisition of 9,000,000 shares on 4 and 19 July 2013. The Notice was defective in that:
- (a) The acquisitions in fact occurred on 3, 4 and 19 July and 1 August 2013 and related to the acquisitions of 500,000, 500,000, 7,500,000 and 500,000 (9,000,000) shares respectively.
- (b) It was not lodged within 2 business days of the acquisition; and
- (c) A Form 604 Notice (Change of Interests of Substantial Shareholder) ought to have been lodged and ought to have referred to Avestra, the entity whose voting power in (and control of) AHA had increased by more than 1% by virtue of the acquisition of the shares.
62. FCAP, who had acquired 1,000,000 shares on 19 July 2013, did not lodge a substantial holding notice with the ASX.

63. In breach of s 671B, Avestra did not lodge correct substantial holder notices (as Forms 604 Notice of Change of Interests of Substantial Shareholder) in Avestra's name in relation to acquisitions on the following dates:

- a) 3 July 2013; a Notice should have been lodged by Avestra on 6 July 2013;
- b) 4 July 2013; a Notice should have been lodged by Avestra on 9 July 2013;
- c) 12 July 2013; a Notice should have been lodged by Avestra on 17 July 2013;
- d) 17 July 2013; a Notice should have been lodged by Avestra on 22 July 2013; and
- e) 19 July 2013; a Notice should have been lodged by Avestra on 24 July 2013.

(the Sixth Offence).

IV. Correspondence with Avestra

64. This matter initially came to ASIC's attention in August 2013 when AHA lodged with ASIC a Notice of Meeting, Explanatory Memorandum and an Independent Experts Report ('**Meeting Materials**') for the purposes of holding an extraordinary general meeting.

65. Following ASIC's review of the Meeting Materials, ASIC identified potential breaches of s 606 and s 671B of the Act in relation to Avestra's previous acquisitions.

66. On 9 September 2013, Avestra (through its solicitor) acknowledged that Avestra's relevant interest in AHA had increased after the Placement and the Rights Issue. Avestra also admitted that a substantial holding notice in the correct form should have been lodged upon completion of the rights issue, but that Avestra had failed to do so. It was stated on behalf of Avestra that:

"At the time of the initial Spann transaction, it was mistakenly thought that a "relevant interest" could only arise as registered owner of shares and not in the capacity as trustee of a Fund. Now that the figures have been reinterpreted it appears that, at that time, Avestra Asset Management Ltd (AAM) may have held a relevant interest [in] 22.00% of the issued capital."

67. On 13 September 2013, Avestra admitted in further correspondence that Avestra acquired a relevant interest in 22% of AHA as a consequence of the transaction with Mr. Spann.

V. Avestra's representations to ASIC regarding subsequent disposals of AHA shares

68. Following discussions with ASIC regarding Avestra's acquisitions in contravention of s 606, Avestra informed ASIC that it would address some of ASIC's concerns by divesting part of its relevant interest in AHA through a transfer of AHA shares, in lieu

of cash, to entities by the name of Nobel Elite Limited ('Nobel') and Citco Global Custody NV ('Citco'). ASIC was informed by Avestra that Nobel and Citco were investors in Canton Mackenzie and Worberg who had sought to redeem their investment in those funds.

69. On 29 January 2014, Avestra informed ASIC that Nobel and Citco had reached an agreement with Avestra to accept AHA shares, valued at \$0.035 per share, in lieu of cash to redeem their investment in Canton Mackenzie and Worberg.
70. On 28 February 2014 Substantial Shareholder Notices, lodged by a number of parties indicated that:
 - (a) On 21 February 2014, Avestra, on behalf of Canton Mackenzie, disposed of 34,500,000 AHA shares. As a consequence, Avestra ceased to have a relevant interest in those shares on that date, with the effect that Avestra's voting power in AHA decreased by 19.93%. Those shares were acquired by China Thrive Investments Limited; and
 - (b) On 24 February 2014, Avestra, on behalf of Canton Mackenzie and Worberg, disposed of 29,335,000 AHA shares. As a consequence, Avestra ceased to have a relevant interest in those shares, with the effect that Avestra's voting power in AHA decreased by 16.95%. Those shares were acquired by Infinito Capital Limited.
71. As a consequence of Avestra's transactions in or around February 2014 (and together with further small on-market transactions that took place between 6 August 2013 and 19 December 2013), Avestra's voting power in AHA had decreased to 18.26% by 24 February 2014.

VI. Avestra's Contraventions of s 606 and s 671B are Serious

72. As outlined in Part 1 (above), the takeovers regime was established for the purpose of protecting shareholders, and to ensure that companies acquire control of other companies in an orderly, competitive and transparent fashion.
73. Section 606 and s 671B are fundamental components of this framework; a breach of which may have serious consequences for shareholders (in both the bidding company and the target company) and for the market. These consequences may include:
 - (a) Depriving shareholders, through a lack of information, of the ability to consider the benefits or otherwise of a takeover proposal, and to consider the impact of a proposed takeover on their interests;
 - (b) Depriving shareholders of information which would enable them to have a say in the strategic direction of the company;

- (c) Making it easier for senior management to carry out transactions on behalf of the company (for example, related party transactions⁶) without the knowledge of shareholders, with potential consequences for the corporate governance of the company;
- (d) Financial loss to shareholders of the target company by the failure of the bidding company to pay to them a control premium⁷; and
- (e) Damage to the integrity of Australia's capital markets, with consequent implications for investor confidence (and appetite to invest) in Australia's markets.

74. During the period March 2013 to August 2013, as a consequence of Avestra's breaches of s 671B, the market was not informed of Avestra's acquisition of control of AHA (in breach of s 606). Accordingly, shareholders in Avestra and AHA, and the market generally:

- (a) Did not know that Avestra was acquiring control of AHA through a series of transactions;
- (b) Did not have enough information to assess the merits or otherwise of Avestra's acquisition of control AHA;
- (c) Did not have a reasonable period of time to consider and assess Avestra's acquisition of control of AHA, and the potential impact on their interests; and
- (d) Did not have a reasonable and equal opportunity to share in the benefits that would ordinarily flow to AHA's shareholders from a takeover, for example, through the payment of a control premium for their AHA shares.

75. Accordingly, the breaches of s 606 and s 671B during the period March 2013 to August 2013 are regarded by ASIC and acknowledged by Avestra to be serious.

VII. Avestra's Cooperation with ASIC

76. Avestra has, at all times, co-operated with ASIC in preparation of the Agreed Statement of Facts and in admitting the contraventions of s 606 and s 671B.

⁶ A 'related party transaction' is any transaction through which a public company or registered managed investment scheme provides a financial benefit to a related party (such as a director, their spouse and certain other relatives). Almost by definition, related party transactions involve conflicts of interest because related parties are often in a position to influence the decision of whether the benefit is provided to them, and the terms of its provision. Related party provisions are set out in Ch 2E and Pt 5C.7 of the *Corporations Act 2001*.

⁷ See Note 1