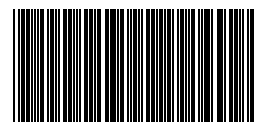




Filed: 12 September 2024 11:43 AM



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Form 3A/B UCPR 6.2

STATEMENT OF CLAIM

COURT DETAILS

Court	Supreme Court of NSW
Division	Common Law
List	Common Law General
Registry	Supreme Court Sydney
Case number	2024/00338021

TITLE OF PROCEEDINGS

First Plaintiff	Adam James Bray
First Defendant	TRANSPORT FOR NSW ABN 18804239602

FILING DETAILS

Filed for	Plaintiff[s]
Legal representative	David Newey
Legal representative reference	
Telephone	(02) 9394 1144
Your reference	230203

NOTICE OF LISTING

This matter has been listed for Directions (Common Law Registrar) at Supreme Court Sydney on 1 November 2024 at 09:00 AM.

ATTACHMENT DETAILS

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Statement of Claim (e-Services), along with any other documents listed below, were filed by the Court.

Statement of Claim (UCPR 3A/3B) (Bray - Statement of Claim.pdf)

[attach.]

Form 3A (version 4)
UCPR 6.2

STATEMENT OF CLAIM

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Common Law
List	General (Representative Proceedings)
Registry	Sydney
Case number	

TITLE OF PROCEEDINGS

First Plaintiff	ADAM JAMES BRAY
Defendant	TRANSPORT FOR NEW SOUTH WALES ABN 18 804 239 602
Number of Defendants	1

FILING DETAILS

Filed for	Adam James Bray Plaintiff
Legal representative	Michael Joseph Gillis Gillis Delaney Lawyers Level 40, ANZ Tower 161 Castlereagh Street Sydney NSW 2000 DX 179 SYDNEY Ph: 02 9394 1144 Fax: 02 9394 1100
Legal representative reference	230203
Contact name and telephone	Michael Gillis, 02 9394 1188

TYPE OF CLAIM

Tort – Negligence

RELIEF CLAIMED

- 1 Damages;
- 2 Interest pursuant to section 100 of the *Civil Procedure Act 2005* (NSW);
- 3 Costs;
- 4 Interest on costs; and
- 5 Such further or other orders as the Court thinks fit.

PLEADINGS, PARTICULARS AND COMMON QUESTIONS,

PLEADINGS AND PARTICULARS

1. The Plaintiff brings this proceeding as a representative proceeding pursuant to Part 10 of the *Civil Procedure Act 2005* (NSW):
 - a. in his own right; and
 - b. on behalf of:
 - i. claims for persons directly injured, either physically and/or psychologically and/or psychiatrically, in the accident the subject of these proceedings ("accident") ("direct personal injury claimants");
 - ii. claims for persons suffering pure mental harm as a result of the accident, including what would be described in the former manner as "nervous shock claims" ("pure mental harm/nervous shock claimants"); and
 - iii. claims for persons able to rely on the compensation to relatives legislation for loss of dependency as a result of the accident ("compensation to relatives claimants").
 (collectively, "Group Members").
2. At all materials times:
 - a. Mr Zachary James Bray (deceased) was a passenger on a White Volvo B7R 57 seat bus registration number 4666-MO ("bus");
 - b. Mr Brett Andrew Button was the driver of the bus ("driver")
 - c. the Plaintiff was the father of Mr Zachary James Bray (deceased);
3. At all materials times:
 - a. the Defendant was a corporation duly constituted by section 3C(1) of the *Transport Administration Act 1988* (NSW) as amended by the *Transport Administration Amendment (RMS Dissolution) Act 2019* (NSW);
 - b. Wine Country Drive, a roadway running from Branxton through Cessnock to the Freemans Waterhole Boundary, New South Wales, also known as MR 220, was a Main Road that was owned and operated by the Defendant ("Wine Country Drive");
 - c. Wine Country Road, where it ran from Greta to North Rothbury, at about GPS location 151.36193, -32.66832, contained an interchange, which was also known as "Greta interchange" ("interchange"); and
 - d. by Declaration Order in the NSW Government Gazette, Wine Country Drive is classified as a State Road for which the Defendant has the exclusive function

to make decisions as to what road work was to be carried out, pursuant to section 61 of the *Roads Act 1993* (NSW).

4. The Defendant, at all material times, was, in the circumstances, responsible for the design, construction, regulation, management and maintenance of Wine Country Drive, including the interchange, and its adjacent and surrounding area where that area had a direct, or indirect, impact upon the condition or safety of the interchange.
5. The Defendant, at all material times, in the circumstances, owed a duty of care to the members of public using Wine Country Drive. The duty of care included, but is not limited to, the requirement to exercise reasonable care, including by the taking reasonable precautions, to avoid the foreseeable risk of harm that members of the public suffer a foreseeable significant risk of harm of suffering injury, loss and damage where the Defendant was reasonably required to:
 - a. ensure that the design for, and the construction of, the interchange, and adjacent and surrounding areas, was compliant with accepted design practice and/or applicable standards and/or guidelines published by the Association of Australian and New Zealand Transport Agencies ("Austroads");
 - b. ensure that the design of the interchange, and adjacent and surrounding areas, which was obtained from internal and/or external designers, and proposed to be implement, was supported by all and any reasonable steps to render the design safe, including but not limited to considerations of appropriate warning signage and speed restrictions;
 - c. consider the availability of other options to the interchange, and adjacent and surrounding areas, design adopted, and proposed to be implemented, that did not give rise to the unreasonable risk of harm to the members of the public using the interchange;
 - d. consider the topography of the site of the interchange, and adjacent and surrounding areas, to ensure that sightlines for members of the public using the interchange were adequate and remained safe, including, but not limited to, design provision for:
 - i. adequate warning of the tightening radius of the interchange and the elliptical shape of the interchange; and
 - ii. the selection of appropriate vegetation to prevent an impediment to available sightlines over time;
 - e. provide for an appropriate and safe speed limit for the interchange, including upon entry onto the interchange, by the use of appropriate advisory and/or speed limit signage;

- f. ensure that the design of the interchange, and adjacent and surrounding areas, provided for the requirement to consider the need to accommodate errant use of the interchange, and adjacent and surrounding areas, by members of the public using the interchange by the design would allow for the circumstance where a large vehicle such as a passenger bus would lose control and/or run-off the interchange, by eliminating roadside hazards to the interchange such as guard rails and/or providing adequate run-off areas to the interchange;
- g. use run-off areas to the interchange instead of guard rails to the interchange, including not designing and/or constructing the interchange with adjacent excavation and/or depressed and/or hollow areas where run-off areas could otherwise have been provided instead of the use of guard rails to the interchange;
- h. provide for, in the design of the interchange, the different physical characteristics and physical dynamics that apply to larger commercial vehicles, such as passenger buses and prime movers with attached semi-trailers, as opposed to non-commercial passenger sedans and like vehicles, which have well known higher centres of gravity, reduced braking capacity and varying traction characteristics;
- i. provide for, in the design of the interchange, specific signage necessary in the context of the other design features of the interchange, and adjacent and surrounding areas, including:
 - i. warning of the tipping and toppling risks for commercial buses, heavy and articulated vehicles;
 - ii. warning of the elliptical shape of the interchange with its decreasing turn radius; and
 - iii. requiring a reduced speed limit for such commercial buses, heavy and articulated vehicles by appropriate advisory signage.
- j. consider the camber of the interchange and the adverse effect of negative superelevation (camber) and its propensity to reduce the minimum rollover threshold for larger vehicles such as commercial buses, heavy and articulated vehicles;
- k. ensure that the design of the interchange did not include negative superelevation, as opposed to positive superelevation, including, but not limited to, creating an holistic design which permitted adequate drainage without negative superelevation, and/or not installing a gutter that could create

a “tripping risk” for larger vehicles such as commercial buses, heavy and articulated vehicles;

- l. ensure that in the design of the interchange where negative superelevation could not be avoided, that the design included mitigating steps such as providing safe and adequate curve radii, adequate line marking, warning signage and speed limits;
 - m. ensure that the design and construction of the interchange, and adjacent and surrounding areas, complied with the following Standards and Guidelines as applicable at the time of construction, and as updated:
 - i. Guide to Road Design Part 4B Roundabouts (Austroads, Sydney August 2009);
 - ii. Guide to Road design - Part 6: Roadside Design, Safety and Barriers. Austroads, Sydney , November, 2009;
 - iii. Guide to Road Design-Part 6B: Roadside Environment. Austroads, Sydney, November, 2009;
 - iv. Manual of Uniform Traffic Control Devices - Part 2: Traffic Control Devices For General Use; and
 - v. Standards Australia, Sydney 2009 (AS 1742.2 2009).
6. The Defendant, at all material times, in the circumstances, in addition to the duty of care referred to in the paragraph above, owed a duty of care to the Plaintiff and the Group Members. The duty of care is a set out in the paragraph above.
 7. At or about 23:30 hours on 11 June 2023, the bus was carrying passengers, including Mr Zachary James Bray (deceased), and was travelling along Wine Country Drive in a generally south westerly direction towards Singleton, New South Wales. The bus had earlier departed from a wedding reception that had been held at Wandin Estate, Lovedale, New South Wales.
 8. After the driver had entered the interchange, the driver drove the bus past the point where Wine Country Drive exited the interchange towards Cessnock, New South Wales. The driver intended to exit the interchange left off Wine Country Drive to join the Hunter Valley Expressway, to continue towards Singleton, New South Wales.
 9. At or about the position on the interchange after the Wine Country Drive exit, and before the Hunter Valley Expressway exit, where the radius of the right-hand turn being made by the bus decreased due to the interchange, the driver lost control of the bus, causing the bus to tip and fall onto the bus’s left-hand side and slide into, and collide with, a guardrail that had been installed on the left hand side of the interchange. The guard rails and its supports intruded into the passenger cabin of the

bus causing devastating and extensive damage to the bus and its passengers ("accident").

10. As a result of the to the accident:
 - a. 10 passengers in the bus, including Zachary James Bray (deceased) were seriously physically injured and were pronounced dead at times first commencing at approximately 23.40 hours;
 - b. 25 passengers suffered serious physical and/or psychological and/or psychiatric injuries;
 - c. other Group Members suffered serious psychological and/or psychiatric injuries:
 - i. upon witnessing a deceased passenger and/or a passenger suffering physical and/or psychological and/or psychiatric injuries; and/or
 - ii. upon being told of the death of a deceased and/or the physical and/or psychological and/or psychiatric injuries.
11. The Defendant breached its duty of care owed to the Plaintiff and the Group Members.

Particulars

- a. Signposting the interchange as a "roundabout" when, correctly, it was not a "roundabout" and it was an elliptically shaped interchange feature to which different considerations and dynamics were applicable;
- b. Designing and constructing a interchange that was elliptical as opposed to round in conformity with the recommendations in Guide to Road Design: 4B, which specified that although it was permissible to have an elliptical interchange where the operating speed on the approach road was less than or equal to 80 km/h, a circular interchange would provide a safer treatment and was therefore desirable if space permitted;
- c. Designed and constructed the interchange which failed to adhere to the Austroads Guide to Rural Road Design Part 4B which stated: "The design of approaches to interchanges on rural roads is more critical than for interchanges in urban areas. This is because drivers travelling on rural roads for long distances for long periods of time are less alert. It is therefore especially important to consider the use of reducing devices for approaches on rural roads", and "The method in this guide controls the speed of traffic entering interchanges through the geometry of the interchange entry, rather than within the interchange where restriction through deflection requirements is essentially too late in the process of the driver negotiating the interchange."

- d. Providing for in the design, construction and operation of the interchange speed signage on approach to the interchange which designated the speed to be 80 km/h with no other change in speed limit or advisory speed sign for the interchange;
- e. Designing and constructing the interchange with a curve radius at the northern area approach of the interchange of 30 metres, below the maximum desirable and absolute values specified in Part 4B of the Austroads Guide of 55 metres;
- f. Designing and constructing the interchange with a superelevation of negative 3 per cent, which lowered the tipping threshold for commercial buses, heavy and articulated vehicles, including the bus, without any or any reasonable reason for doing so;
- g. Designed and planted vegetation on the central island to the interchange which limited the available line of sight and which delayed a user of the interchange's vision to the tightening curvature of the interchange, such that the road user was likely to be deprived of the ability to perceive what is a visually subtle but nonetheless critical change in the road alignment;
- h. Installing inadequate road warning signage of the hazards associated with the interchange, including its tightening radius;
- i. Designing and installing misleading signage on the interchange in that the single right turn arrow at the point close to the accident's location was confusing in that it could be taken as a form of warning that the right lane continued to circulate whereas the left lane must exit, rather than as a warning advising of a turn to the right in contradistinction to the series of four pavement arrows on the northern approach;
- j. Installing signage that did not include appropriate advisory signage as part of the interchange design to provide guidance that the interchange was potentially dangerous to commercial buses, heavy and articulated vehicles, including the bus, by the use of a titling truck symbol or equivalent sign, together with or in addition to a lowered speed advisory for commercial buses, heavy and articulated vehicles;
- k. Implementing a design that did not take into account of the increased roll-over risk associated with all of the matters particularised above;
- l. Designing and constructing a interchange that did not provide a more forgiving roadside area in the event of vehicles running off for any reason, including providing a run-off area instead of safety barriers, or an embankment, batter or batter slope, as opposed to an adjacent depression or hollow area that did not require the use of safety barriers;

- m. Conducted construction and post construction audits that were inadequate to identify the unsafe design and construction of the interchange as particularised above.
- n. Further, or alternatively, in the premises, the breaches particularised above were such that it gave rise to a real and significant risk that a driver of a heavy vehicle with a raised centre of gravity, such as a passenger bus or prime mover and semi-trailer, that entered the interchange, and was exercising reasonable care having regard to what the driver reasonably considered was a reasonable speed to travel the interchange, could nonetheless lose control of the vehicle, trip the vehicle causing it to fall onto its side and come into collision with the adjacent guard rails.

COMMON QUESTIONS AND GROUP MEMBERS

- 12. The claim advanced by the Plaintiff, on his own behalf, and on behalf of Group Members, in this proceeding, and resulting in loss or damage, include:
 - a. claims for persons directly injured, either physically and/or psychologically and/or psychiatrically, in the accident ("direct personal injury claimants");
 - b. claims for persons suffering pure mental harm, including what would be described in the former parlance as "nervous shock claims" ("pure mental harm/nervous shock claimants"); and
 - c. claims for persons able to rely on the compensation to relatives legislation for loss of dependency ("compensation to relatives claimants").
- 13. As of the date of the commencement of these proceedings, there are seven or more persons who are Group Members having claims against the Defendant as pleaded in this statement of claim.
- 14. The questions of law or fact common to the claims of the Plaintiff and the Group Members in this proceeding include:
 - a. whether the Defendant was negligent;
 - b. the quantum of damages suffered by the Plaintiff and the Group Members;

RELIEF

- 15. The Plaintiff on his own behalf and on behalf of the Group Members claims the relief set out at the commencement of this statement of claim.

SIGNATURE OF LEGAL REPRESENTATIVE

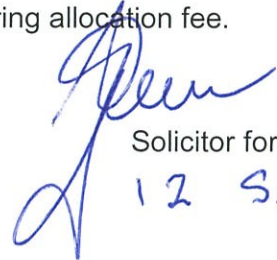
I certify under clause 4 of Schedule 2 to the *Legal Profession Uniform Law Application Act 2014* that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the claim for damages in these proceedings has reasonable prospects of success.

I have advised the plaintiffs that court fees may be payable during these proceedings. These fees may include a hearing allocation fee.

Signature

Capacity

Date of signature


Solicitor for the plaintiff
12 September 2024

NOTICE TO DEFENDANT

You will be in default if you do not file a defence within 28 days of being served with this statement of claim. The court may enter judgment against you without any further notice to you. The judgment may be for the relief claimed in the statement of claim and for the plaintiff's costs of bringing these proceedings. The court may provide third parties with details of any default judgment entered against you.

HOW TO RESPOND

Please read this statement of claim very carefully. If you have any trouble understanding it or require assistance on how to respond to the claim you should get legal advice as soon as possible.

You can respond in one of the following ways:

1. **If you intend to dispute the claim**, by filing a defence and/or making a cross-claim.
2. **If money is claimed, and you believe you owe the money claimed**, by:
 - paying the plaintiff all of the money and interest claimed. If you file a notice of payment under UCPR 6.17 further proceedings against you will be stayed unless the court otherwise orders;
 - filing an acknowledgement of the claim; or
 - applying to the court for further time to pay the claim.
3. **If money is claimed, and you believe you owe part of the money claimed**, by:
 - paying the plaintiff that part of the money that is claimed; or
 - filing a defence in relation to the part that you do not believe is owed.

You can get further information about what you need to do to respond to the claim from:

- the court registry for limited procedural information;
- a legal practitioner; or
- LawAccess NSW on 1300 888 529 or at .

Court forms are available on the UCPR website at or at any NSW court registry.

REGISTRY ADDRESS

Street address	Supreme Court, Queens Square, Level 5, 184 Phillip Street, Sydney NSW 2000
Postal address	PO Box 3, Sydney NSW 2001
Telephone	02 9230 8111

FURTHER DETAILS ABOUT PLAINTIFF

Plaintiff

Name	Adam James Bray
Address	86 Glenmurray Road KANGAROO VALLEY NSW 2577

Legal representative for plaintiff

Name	David Thomas Newey
Practising certificate number	9399
Firm	Gillis Delaney Lawyers
Contact solicitor	Michael Gillis
Address	Level 40 161 Castlereagh Street SYDNEY NSW 2000
DX address	179, Sydney
Telephone	(02) 9394 1144
Fax	(02) 9394 1100
Email	mjg@gdlaw.com.au,
Electronic service address	N/A

DETAILS ABOUT DEFENDANTS

Defendant	Transport for NSW 231 Elizabeth Street SYDNEY NSW 2000
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To respond online, you will need the Case Number (located in the Court Details section of the court approved Statement of Claim). If you are representing yourself, you will also need the document barcode (normally located on the top right hand side of the Statement of Claim).

If this Statement of Claim does not have a document barcode, you will need to attend a Court Registry to obtain the document barcode. You will need to provide identification (e.g. drivers license) before the Court Registry staff can give you a form relating to this case.

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