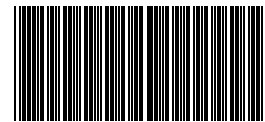




Filed: 21 March 2025 10:49 AM



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Form 7A/B
UCPR 14.3

DEFENCE

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	TRANSPORT FOR NSW, Defendant 1
Legal representative	Brian Moroney
Legal representative reference	
Telephone	9232 2255
Your reference	BGM:500392

NOTICE OF LISTING

This matter has been listed for Directions at Supreme Court Sydney on 24 April 2025 at 09:30 AM

ATTACHMENT DETAILS

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

Defence (UCPR 7A/7B) (Defence - TfNSW.pdf)

[attach.]

Form 7A (version 5)
UCPR 14.3

DEFENCE

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Common Law
List	General
Registry	Sydney
Case number	2024/338021

TITLE OF PROCEEDINGS

Plaintiff	Adam James Bray
Defendant	Transport for New South Wales ABN 18 804 239 602

FILING DETAILS

Filed for	Transport for New South Wales , Defendant
Legal representative	Brian Moroney, Moray & Agnew
Legal representative reference	BGM:500392
Contact name and telephone	Brian Moroney, +61 2 9232 2255
Contact email	bmoroney@moray.com.au

PLEADINGS AND PARTICULARS

The defendant, Transport for New South Wales ABN 18 804 239 602 ("**TfNSW**") pleads and responds to the statement of claim ("**SOC**") filed 12 September 2024 as follows:

PLEADINGS, PARTICULARS AND COMMON QUESTIONS

PLEADINGS AND PARTICULARS

1. In answer to paragraph 1 of the SOC, TfNSW:
 - (a) admits that the plaintiff brings this proceeding in his own right;
 - (b) admits that the plaintiff seeks to bring this proceeding as a representative proceeding pursuant to Part 10 of the *Civil Procedure Act 2005* (NSW) ("**CPA**"); and
 - (c) otherwise does not admit the allegation.
2. TfNSW admits paragraph 2 of the SOC.
3. In answer to paragraph 3 of the SOC, TfNSW:
 - (a) in relation to sub-paragraph (a):
 - (i) admits that the defendant is a corporation constituted by s 3C(1) of the *Transport Administration Act 1988* (NSW);

- (ii) does not know and cannot admit what is meant by 'all material times' and, in those premises, does not admit the balance of the subparagraph;
 - (b) in relation to sub-paragraph (b):
 - (i) admits that Wine Country Drive was as at 11 June 2023 a road running from Branxton to Cessnock;
 - (ii) admits that Wine Country Drive was as at 11 June 2023 a Main Road (within the meaning of s 46 of the *Roads Act* 1993) and known as M220;
 - (iii) admits that Wine Country Drive was as at 11 June 2023 administered and maintained by TfNSW;
 - (iv) otherwise denies that Wine Country Drive was "owned and operated" by TfNSW;
 - (v) does not know and cannot admit what is meant by 'all material times' and, in those premises, does not admit the balance of the subparagraph;
 - (c) admits sub-paragraph (c), save that the reference to 'Wine County Road' therein should be a reference to 'Wine Country Drive';
 - (d) in relation to sub-paragraph (d):
 - (i) admits that Wine Country Drive is classified as a main road for the purposes of s 46 of the *Roads Act*; and
 - (ii) otherwise denies the paragraph.
4. In answer to paragraph 4 of the SOC, TfNSW:
- (a) repeats and relies upon paragraph 3 of this defence;
 - (b) says that it does not know and cannot admit what is meant by 'at all material times';
 - (c) admits that as at 11 June 2023 and subject to any delegation of responsibility, TfNSW had responsibility for the design, construction, management and maintenance of Wine Country Drive and the Interchange; and
 - (d) otherwise denies the paragraph.
5. In answer to paragraph 5 of the SOC, TfNSW:
- (a) admits it owed to road users of Wine Country Drive a duty to take reasonable care in the exercise of its statutory powers for the performance of "road work" and "traffic control work" (as those expressions are defined in the *Roads Act* 1993) in respect of Wine Country Drive, including the interchange;
 - (b) says that reasonable care in the exercise of its statutory powers is assessed by reference to road users taking reasonable care for their own safety;

- (c) says that at the time of the design and construction of Wine Country Drive and the interchange, this duty rested with TfNSW's predecessor Roads and Traffic Authority (**RTA**);
- (d) says that TfNSW is responsible for any liabilities incurred by the RTA in discharge of this duty;

Particulars

The liabilities of the RTA passed to Roads and Maritime Services and subsequently to TfNSW: *Transport Legislation Amendment Act 2011* (NSW), s 183(2) and *Transport Administration Act 1988* (NSW), Schedule 7, item 218(2)

- (e) says that in discharge of its duty, RTA engaged competent contractors and consultants to carry out and to review and verify the design and construction of the interchange, namely:
 - (i) Abigroup Contractors Pty Ltd (**Abigroup**);

Particulars

Design and Construct Project Deed entered into between the Roads and Traffic Authority of New South Wales (**RTA**) and Abigroup on 29 October 2010

- (ii) Davis Langdon Pty Ltd (**Davis Langdon**); and

Particulars

Deed of Appointment of Project Verifier entered into between the RTA, Abigroup and Davis Langdon Australia Pty Ltd on 29 October 2010

- (iii) Sinclair Knight Merz Pty Ltd (**SKM**) jointly with SMEC Australia Pty Ltd (**SMEC**);

Particulars

Designer's Deed of Covenant executed by SKM and SMEC

- (iv) SMEC in its own right;

Particulars

Designer's Deed of Covenant executed by SMEC

- (v) Douglas Partners Pty Ltd (**Douglas Partners**);

Particulars

Designer's Deed of Covenant executed by Douglas Partners

- (vi) HBO+EMTB Urban and Landscape Design Pty Limited (**HBO+EMTB**);

Particulars

Designer's Deed of Covenant executed by HBO+EMTB

- (vii) Renzo Tonin & Associates Pty Limited (**Renzo Tonin**);

Particulars

Designer's Deed of Covenant executed by Renzo Tonin

(viii) GHD Group Pty Ltd (**GHD**).

Particulars

GHD Project Management Plan for Hunter Expressway – Kurri Kurri to
Branxton Project Design Verification, February 2011

- (f) says that in discharge of its duty, RTA:
 - (i) was reasonably entitled to rely; and
 - (ii) in fact relied,
 - on the contractors and consultants referred to in subparagraph (e) above to perform their respective design, review and/or verification obligations with the exercise of reasonable skill and care;
 - (g) otherwise does not admit that the content of the duty owed by RTA (or TfNSW) extended to “ensuring” or “performing” the matters set out in subparagraphs 5(a)-(m) of the SOC; and
 - (h) says further that insofar as it is alleged that the duty extends to a duty not to cause any particular Group Member pure mental harm, the existence of the duty is to be assessed having regard to s 32 of the **Civil Liability Act 2002** (NSW).
6. In answer to paragraph 6 of the SOC, TfNSW repeats its answer to paragraph 5 of this Defence, and otherwise denies the paragraph.
 7. TfNSW admits paragraph 7 of the SOC.
 8. TfNSW admits paragraph 8 of the SOC.
 9. In answer to paragraph 9 of the SOC, TfNSW:
 - (a) admits that at a point near or after the Wine Country Drive exit and prior to the Hunter Valley Expressway, the driver lost control of the bus, causing the bus to tip and fall on 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;
 - (b) admits that the guardrail and its supports intruded into the passenger cabin;
 - (c) otherwise denies the paragraph; and
 - (d) says further that the driver was driving the bus negligently, including at excessive and unreasonable speed, causing him to lose control of the bus and cause the accident including the plaintiffs' injuries, losses and damage.
 10. In answer to paragraph 10 of the SOC, TfNSW relies upon paragraphs 8 and 9 of this defence and otherwise:
 - (a) admits sub-paragraph (a);
 - (b) does not know and cannot admit sub-paragraph (b);

- (c) in relation to sub-paragraph (c):
 - (i) repeats paragraph 1 of this defence; and
 - (ii) does not know and cannot admit the sub-paragraph.

11. In answer to paragraph 11 of the SOC, TfNSW:

- (a) repeats and relies upon paragraphs 1, 5, 6, 9 and 10 of this defence; and
- (b) denies the paragraph.

11A. Further and in answer to the whole of the SOC, TfNSW relies on sections 5B – 5E of the *Civil Liability Act* and says:

- (a) the claims brought in these proceedings are claims to which Part 1A of the *Civil Liability Act* applies;
- (b) TfNSW was not negligent within the meaning of s 5 of the *Civil Liability Act*;
- (c) TfNSW was not negligent by or for failing to take precautions against the alleged risk of harm, by reason of sections 5B and 5C of the *Civil Liability Act* ;
- (d) any injuries, loss or damages suffered by the plaintiffs (which are not admitted) were not causally connected to any act or omission of TfNSW pursuant to section 5D of the *Civil Liability Act* because:
 - (i) any negligence on the part of TfNSW (which is denied) was not a necessary condition of the occurrence of the harm;
 - (ii) it is not appropriate for the scope of TfNSW's liability (which is denied) to extend to the harm so caused (which is denied);
 - (iii) responsibility for the harm should not be imposed on TfNSW; and
 - (iv) in the premises of on or a combination of (i)-(iii), there should be no finding that any negligence by TfNSW caused the harm alleged.

11B. Further and in answer to the whole of the SOC, TfNSW:

- (a) says that it is a 'public or other authority' within the meaning of section 41 of the *Civil Liability Act*;
- (b) says that if and to the extent that TfNSW is liable for the acts or omissions alleged in the SOC, those acts or omissions were in the exercise of power:
 - (i) conferred by statute; and
 - (ii) of a kind that persons generally are not authorised to exercise without specific statutory authority;

Particulars

- (A) The acts or omissions particularised in paragraph 11 of the SOC concern the planning, approval and carrying out of "road work" or "traffic control work" under Part 6 of the *Roads Act*, which may only occur by or with the approval of a roads authority or TfNSW.

- (B) Section 138 of the *Roads Act* prohibits a person from erecting a structure or carrying out a work in, on or over a main road other than with the consent of the appropriate roads authority and the concurrence of TfNSW.
- (c) says that the alleged acts or omissions were not so unreasonable that an authority having the same powers could not properly consider the alleged acts or omissions to be a reasonable exercise of, or failure to exercise, its statutory powers; and
- (d) in the premises and by operation of s 43A(3) of the *Civil Liability Act*, TfNSW is not liable for the conduct alleged.
- 11C. Further and in answer to the whole of the SOC, TfNSW says that insofar as the claims in this proceeding comprise claims for pure mental harm arising wholly or partly from mental or nervous shock in connection with another person being killed, injured or put in peril by an alleged act or omission by TfNSW, by reason of s 30 of the *Civil Liability Act*:
- (a) a claimant is not entitled to recover damages for pure mental harm unless:
- (i) the claimant witnessed, at the scene, the victim being killed, injured or put in peril; or
 - (ii) the claimant is a close member of the family of the victim within the meaning of s 30(5) of the *Civil Liability Act*.
- 11D. Further and in answer to the whole of the SOC, TfNSW says that insofar as the claims in this proceeding comprise claims for pure mental harm resulting from negligence, by reason of s 31 of the *Civil Liability Act* TfNSW is not liable to pay damages unless the harm consists of a recognised psychiatric illness.
- 11E. Further and in answer to the whole of the SOC, TfNSW says that Part 4 of the *Motor Accident Injuries Act 2017* applies to the quantification of any damages payable to the Plaintiff and to Group Members.
- 11F. Further and in answer to the whole of the SOC, TfNSW says that to the extent the Plaintiff and any Group Member has received statutory benefits under the *Motor Accident Injuries Act 2017*, by reason of the prohibition against double recovery the quantification of any damages payable to him or to any such Group Member is reduced to account for those benefits.

COMMON QUESTION AND GROUP MEMBERS

12. In answer to paragraph 12, TfNSW:

- (a) repeats and relies upon paragraphs 1 and 10 of this defence; and
- (b) does not admit the paragraph.

13. In answer to paragraph 13, TfNSW:

- (a) repeats and relies upon paragraphs 1 and 10 of this defence; and
 - (b) does not admit the paragraph.
14. In answer to paragraph 14, TfNSW says that if there are common questions of law or fact in these proceedings (which it does not admit), the following questions would also be common:
- (a) What were the precise facts and circumstances that caused the accident, including the role and responsibilities of others such as the bus driver and/or his employer, design and construction practitioners and other contractors?
 - (b) What was the relevant risk of harm?
 - (c) Did the defendant (or its predecessor RTA) owe a duty of care? If so, what is the nature and scope of the defendant's duty of care, including any reasonable precautions the defendant was required to take?
 - (d) Did the defendant breach any duty of care?
 - (e) Was any breach of a duty of care by the defendant causative of the claimed loss(es)?

RELIEF

15. TfNSW denies liability for all or any of the relief claimed in the SOC under the heading "Relief Claimed".

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 defence to the claim for damages in these proceedings has reasonable prospects of success.

Signature of legal representative



Capacity

Solicitor for the defendant

Date of signature

21 MARCH 2025