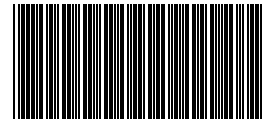




Filed: 24 April 2025 12:56 PM



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Form 9
UCPR 9.1

FIRST CROSS-CLAIM STATEMENT OF CROSS-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

TITLE OF THIS CROSS-CLAIM

First Cross-claimant	TRANSPORT FOR NSW
First Cross-defendant	Brett Andrew Button (MIN: 708188)
Second Cross-defendant	LINQ BUSLINES PTY. LTD.
Number of cross-defendants	4

FILING DETAILS

Filed for	TRANSPORT FOR NSW, Cross Claimant 1
Filed in relation to	Plaintiff's claim
Legal representative	Brian Moroney
Legal representative reference	
Telephone	9232 2255
Your reference	BGM:500392

NOTICE OF LISTING

A Notice of Listing will be attached and served with this statement of cross claim.

ATTACHMENT DETAILS

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

Statement of Cross Claim (UCPR 9) (First Cross Claim - TfNSW.pdf)

[attach.]

Form 9 (version 6)
UCPR 9.1

FIRST CROSS-CLAIM STATEMENT OF CROSS-CLAIM

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

TITLE OF THIS CROSS-CLAIM

Cross-claimant	Transport for New South Wales ABN 18 804 239 602
First cross-defendant	Brett Andrew Button
Second cross-defendant	Linq Buslines Pty Ltd ACN 131 153 896
Third cross-defendant	Acciona Infrastructure Projects Australia Pty Ltd ACN 000 201 516
Fourth cross-defendant	Aecom Cost Consulting Pty Ltd ACN 008 657 289

FILING DETAILS

Filed for	Transport for New South Wales, Defendant / Cross-claimant
Filed in relation to	First Cross-claim
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

RELIEF CLAIMED

- 1 Damages.
- 2 Interest pursuant to s 100(1) of the *Civil Procedure Act 2005* (NSW).
- 3 Equitable contribution.

4 Contribution pursuant to:

- (a) section 5 of the *Law Reform (Miscellaneous Provisions) Act 1946* (NSW); and/or
- (b) section 12 of the *Law Reform (Miscellaneous Provisions) Act 1965* (NSW).

5 Costs.

PLEADINGS AND PARTICULARS

1 Transport for NSW advances this cross-claim in the event (which is denied) that Transport for NSW is liable to the plaintiff or any group members for loss as pleaded in the statement of claim.

Brett Andrew Button

2 The first cross-defendant, Brett Andrew Button, was at all material times the driver of the bus.

3 As the driver of the bus, Mr Button owed:

- (a) to each passenger of the bus (including any group members who were passengers) a duty to take reasonable care to avoid harm to them from the manner in which he drove the bus; and
- (b) to the plaintiff and other group members who were not passengers a duty to take reasonable care not to cause mental harm to them from the manner in which he drove the bus.

4 At the time of the crash, Mr Button was driving in a manner dangerous to other persons, in that he:

- (a) was under the influence of Tramadol to the degree that there was impairment of his driving ability, having consumed Tramadol in a quantity exceeding the maximum recommended by medical professionals, and knowing that consuming substantial amounts of Tramadol had the capacity to affect his ability to drive;
- (b) engaged in risk-taking behaviour; and
- (c) drove too quickly to safely negotiate the roundabout.

Particulars

Statement of Agreed Facts dated 3 May 2024, filed in the District Court of New South Wales, [9]

5 In doing so, Mr Button breach his duty of care to the plaintiff and to each group member.

- 6 By reason of the matters pleaded in paragraphs 3-5 above, if Transport for NSW is liable to the plaintiff or any group members for loss, then:
- (a) Mr Button is a tortfeasor who would, if sued, be liable to the plaintiff and each group member for the same damage;
 - (b) Transport for NSW and Mr Button have a coordinate liability;
 - (c) if and to the extent that Transport for NSW discharges that coordinate liability in whole or in part, then Mr Button is liable to contribute to Transport for NSW an amount that is just and equitable, by reason of:
 - (i) equitable contribution;
 - (ii) section 5 of the *Law Reform (Miscellaneous Provisions) Act 1946* (NSW); and/or
 - (iii) section 12 of the *Law Reform (Miscellaneous Provisions) Act 1965* (NSW).

Linq Buslines

- 7 The second cross-defendant, Linq Buslines Pty Ltd ('**Linq Buslines**'), is:
- (a) a company registered under the ***Corporations Act 2001*** (Cth); and
 - (b) capable of being sued in its own name.
- 8 Linq Buslines was at all material times the employer of Mr Button.
- 9 At the time of the incident the subject of these proceedings, Mr Button was driving a bus provided by Linq Buslines, as part of Linq Buslines' business.
- 10 The acts and omissions of Mr Button pleaded in paragraph 4 above occurred in the course of his duties as an employee bus driver of Linq Buslines.
- 11 In the premises of paragraphs 8-10 above, Linq Buslines is vicariously liable for the acts and omissions of Mr Button in breach of his duty of care to the plaintiff and to group members.
- 12 By reason of the matters pleaded in paragraphs 2 - 11 above, if Transport for NSW is liable to the plaintiff or any group members for loss, then:
- (a) Linq Buslines is a tortfeasor who would, if sued, be liable to the plaintiff and each group member for the same damage;
 - (b) Transport for NSW and Linq Buslines have a coordinate liability;

- (c) if and to the extent that Transport for NSW discharges that coordinate liability in whole or in part, then Linq Buslines is liable to contribute to Transport for NSW an amount that is just and equitable, by reason of:
 - (i) equitable contribution;
 - (ii) section 5 of the *Law Reform (Miscellaneous Provisions) Act 1946* (NSW); and/or
 - (iii) section 12 of the *Law Reform (Miscellaneous Provisions) Act 1965* (NSW).

Acciona Infrastructure Projects Australia Pty Ltd

- 13 The third cross-defendant, Acciona Infrastructure Projects Pty Ltd (**'Acciona'**), is:
 - (a) a company registered under the *Corporations Act*; and
 - (b) capable of being sued in its own name.
- 14 Acciona was known:
 - (a) from on or around 2 February 2016 to on or around 14 September 2020 – as Lendlease Engineering Pty Limited;
 - (b) from on or around 1 August 2013 to 1 February 2016 – as Lend Lease Engineering Pty Limited;
 - (c) from on or around 16 December 1991 to 31 July 2013 – as Abigroup Contractors Pty Ltd (**Abigroup**).
- 15 On or around 29 October 2010, the Roads and Traffic Authority (**RTA**) and Acciona (then known as Abigroup) entered into a deed referred to as the Design and Construct Project Deed.
- 16 The Design and Construct Project Deed includes the following defined terms, among others:
 - (a) “Contractor’s Work”, which means all things and tasks which the Contractor is, or may be, required to carry out or do under the deed to comply with its obligations under the deed to design and construct the Project Works and Temporary Works (as defined) and to perform the Landscaping Maintenance;
 - (b) “Design Documentation”, which means all:
 - (i) design documentation (including design standards, design reports, durability reports, specifications, models, samples, calculations, drawings, shop drawings, digital records and all other relevant data) in computer readable and written forms, or stored by any other means, which are required for the performance of the Contractor's Work, or

- which the Contractor or any other person creates in performing the Contractor's Work (including the design of Temporary Works); and
- (ii) computer software (including both source code and object code versions) where the computer software has been specifically created or specifically modified for the purposes of the Contractor's Work;
 - (c) "Landscaping Maintenance", which means the services described in the section of the Scope of Works and technical criteria identified in item 29(bb) of Schedule 1;
 - (d) "Project Works", which means the physical works the Contractor must design, construct, complete and hand over under the deed including the Works, Service Works (as defined), Property Works and Local Road Works (as defined), but excluding Temporary Works (as defined) and Landscaping Maintenance;
 - (e) "Site", which means the land and airspace described as the Site in the Appendix to the Scope of Works and Technical Criteria identified in Item 29(II) of Schedule 1;
 - (f) "Works", which means the physical works, Services (as defined), materials and equipment within the Site which the Contractor must design, construct, complete and hand over to RTA in accordance with the deed, excluding the Local Road Works (as defined), the Property Works and the Service Works.

Particulars

Design and Construct Project Deed, clause 23.2

- 17 Under the Design and Construct Project Deed, Acciona:
- (a) agreed to investigate, design and construct the Project Works as defined under the deed;
 - (b) warranted that the investigation, design and construction of the Project Works was fit for its intended purpose;
 - (c) agreed to perform the Landscaping Maintenance in accordance with the deed;
 - (d) agreed to regularly and diligently progress the Contractor's Work in accordance with the deed;
 - (e) subject to the express provisions of the deed, accepted responsibility for and the risk of all costs, damages, expenses, losses, liabilities or delays which it incurred or suffered arising out of or in any way in connection with the performance of its obligations under the deed.

Particulars

Design and Construct Project Deed, clauses 1.1 and 1.2

- 18 The “Project Works” under the Design and Construct Project Deed included the interchange.

Particulars

The interchange comprised “Works” within the meaning of clause 23.1 of the Design and Construct Project Deed

- 19 Under the Design and Construct Project Deed, Acciona:
- (a) was obliged to prepare, develop and complete all Design Documentation in accordance with the deed; and
 - (b) acknowledged that the RTA did not have any design obligations in respect of the Project Works or the Design Documentation.

Particulars

Design and Construct Project Deed, clause 12.2

- 20 Under the Design and Construct Project Deed, Acciona warranted that:
- (a) the Design Documentation would:
 - (i) satisfy the requirements of the Scope of Works and Technical Criteria and the other requirements of the deed;
 - (ii) be fit for its intended purpose; and
 - (iii) be completed in accordance with the requirements of the deed;
 - (b) construction in accordance with the Design Documentation would satisfy the requirements of the Scope of Works and Technical Criteria and the other requirements of the deed;
 - (c) the Project Works would:
 - (i) be completed in accordance with, and satisfy the requirements of, the deed; and
 - (ii) upon Construction Completion (as defined), be fit for their intended purposes;
 - (d) the Landscaping Maintenance would be completed in accordance with, and satisfy the requirements of, the deed; and
 - (e) Acciona would bear full liability and responsibility for the design and construction of the Project Works.

Particulars

Design and Construct Project Deed, clause 12.1

- 21 Acciona, directly and/or by its subcontractors, carried out the design and construction of the interchange.

Contribution

- 22 The duty of care alleged by the plaintiff as against Transport for NSW is a duty with respect to the design and construction of the interchange.

Particulars

Statement of claim, paragraph 5

- 23 The breaches of duty alleged by the plaintiff are allegations with respect to the design and construction of the interchange, being work that was delegated to Acciona.

Particulars

Statement of claim, paragraph 11, particulars (a)-(n)

- 24 If Transport for NSW owed the plaintiff and group members the duty pleaded in paragraph 5 of the statement of claim, or at all, then by undertaking design and construction work for the interchange under the Design and Construct Project Deed Acciona owed the plaintiff and group members a duty:
- (a) to exercise reasonable skill and care in the performance of that work;
 - (b) at least equivalent in scope to that owed by Transport for NSW;
 - (c) alternatively, coextensive in part with the duty owed by Transport for NSW.
- 25 If any of the breaches of duty alleged by the plaintiff are established, they are breaches of duty by Acciona.
- 26 If Transport for NSW is liable to the plaintiff or any group members for loss, then:
- (a) by reason of the matters pleaded in paragraphs 13 to 25 above, Transport for NSW and Acciona have a coordinate liability;
 - (b) if and to the extent that Transport for NSW discharges that coordinate liability in whole or in part, then Acciona is liable to contribute to Transport for NSW an amount that is just and equitable, by reason of:
 - (i) equitable contribution;

(ii) section 5 of the *Law Reform (Miscellaneous Provisions) Act 1946* (NSW);
and/or

(iii) section 12 of the *Law Reform (Miscellaneous Provisions) Act 1965* (NSW).

Direct Negligence

- 27 Acciona owed a duty to Transport for NSW to exercise reasonable skill and care in carrying out each (alternatively, any one or more of) the contractual duties pleaded in paragraphs 15 to 21 above.
- 28 If Transport for NSW is liable to the plaintiff or any group members for loss, then:
- (a) such loss will have been caused in whole (alternatively, in part) by a breach of the duty pleaded in paragraphs 23 and 24 above; and
 - (b) Acciona is liable to Transport for NSW in damages in an amount reflecting any loss suffered by Transport for NSW caused by Acciona's breach.

Particulars

It was reasonably foreseeable that a failure to take care in carrying out one or more of the contractual duties pleaded in paragraphs 15 to 21 above could result in loss and damage to road users, for which Transport for NSW might be held liable or at least joined in proceedings, thereby incurring legal costs.

Breach of contract

- 29 If Transport for NSW is liable to the plaintiff or any group members for loss, then:
- (a) such loss will have been caused in whole (alternatively, in part) by a breach of one or more of the contractual duties pleaded in paragraphs 15 to 21 above; and
 - (b) Acciona is liable to Transport for NSW in an amount reflecting the loss caused by Acciona's breach.

Aecom Cost Consulting Pty Ltd

- 30 The fourth cross-defendant, Aecom Cost Consulting Pty Ltd ('**Aecom**'):
- (a) is a company registered under the *Corporations Act*;
 - (b) is capable of being sued in its own name; and

- (c) was from around 2 May 1990 to 5 April 2016 known as Davis Langdon Australia Pty Ltd (**Davis Langdon**).
- 31 On or around 29 October 2010, the RTA, Acciona and Aecom (then known as Davis Langdon) entered into a deed referred to as the Deed of Appointment of Project Verifier.
- 32 Under the Deed of Appointment of Project Verifier, Aecom:
- (a) accepted an appointment as project verifier; and
 - (b) agreed to provide the services in Schedule 2 to the deed (the **Verification Services**).

Particulars

Deed of Appointment of Project Verifier, clause 2.1 and Schedule 2

- 33 Under the Deed of Appointment of Project Verifier, Aecom:
- (a) acknowledged that its obligations extended to and included the obligations, functions, duties and services of the “Project Verifier” under the Design and Construct Project Deed and its schedules, exhibits and accompanying appendices;
 - (b) acknowledged that each of the other parties:
 - (i) was relying on the knowledge, skill, expertise and expertise of Aecom in the performance of its obligations under the Deed of Appointment of Project Verifier;
 - (ii) may suffer loss if the Project Verifier did not perform its obligations in accordance with the requirements of the deed;
 - (c) warranted to the other parties that, in performing the Verification Services, it would comply with all Law (as defined in the Design and Construct Project Deed), act honestly, diligently, reasonably and with the degree of professional care, knowledge, skill, expertise, experience and care which would reasonably be expected of an expert professional providing services similar to the Verification Services within the design and construction industry generally and the design and construction of major engineering works in particular;
 - (d) acknowledged that the other parties were entitled to and would rely on any certificate or other document signed or given by Davis Langdon under or pursuant to the Deed of Appointment of Project Verifier or the Design and Construct Project Deed and its schedules, exhibits and accompanying appendices; and

- (e) warranted to the other parties that it would carry out and perform the Services in accordance with the Deed of Appointment of Project Verifier.

Particulars

Deed of Appointment of Project Verifier, clauses 1.1 (definition of “Project Documents”), 3.1, 3.2 and Schedule 1

- 34 On or around 7 November 2014, Aecom certified that:
- (a) Acciona had completed construction in accordance with the Design Documentation it was entitled to use for construction purposes under clause 12.2 of the deed;
 - (b) the design used by Acciona for construction purposes was in accordance with the requirements of the deed, including the Scope of Works and Technical Criteria;
 - (c) the construction complied with the requirements of the deed, including the Scope of Works and Technical Criteria; and
 - (d) the following designs were in accordance with the requirements of the deed, including the Scope of Works and Technical Criteria:
 - (i) structural design;
 - (ii) geometric road design;
 - (iii) urban and landscape design;
 - (iv) safety design;
 - (v) operation and maintenance design;
 - (vi) all other elements of the Project Works carried out by Acciona.

Particulars

Project Verifier’s Certificate issued in the form of Schedule 16 to the Design and Construct Project Deed on 7 November 2014

- 35 The duty of care alleged by the plaintiff as against Transport for NSW is a duty with respect to the design and construction of the interchange.

Particulars

Statement of claim, paragraph 5

- 36 The breaches of duty alleged by the plaintiff are allegations with respect to the design and construction of the interchange, the verification and certification of which was delegated to Aecom.

Particulars

Statement of claim, paragraph 11, particulars (a)-(n)

- 37 If Transport for NSW owed the plaintiff and group members the duty pleaded in paragraph 5 of the statement of claim, or at all, then by undertaking the verification and certification work for the design of the interchange Aecom owed the plaintiff and group members a duty:
- (a) to exercise reasonable skill and care in the performance of that work;
 - (b) at least equivalent in scope to that owed by Transport for NSW;
 - (c) alternatively, coextensive in part with the duty owed by Transport for NSW.
- 38 If any of the breaches of duty alleged by the plaintiff are established, they are breaches of duty by Aecom.
- 39 If Transport for NSW is liable to the plaintiff or any group members for loss, then:
- (a) by reason of the matters pleaded in paragraphs 30 to 38 above, Transport for NSW and Aecom have a coordinate liability;
 - (b) if and to the extent that Transport for NSW discharges that coordinate liability in whole or in part, then Aecom is liable to contribute to Transport for NSW an amount that is just and equitable, by reason of:
 - (i) equitable contribution;
 - (ii) section 5 of the *Law Reform (Miscellaneous Provisions) Act 1946* (NSW); and/or
 - (iii) section 12 of the *Law Reform (Miscellaneous Provisions) Act 1965* (NSW).

Direct Negligence

- 40 Aecom owed a duty to Transport for NSW to exercise reasonable skill and care in carrying out one or more of the contractual duties pleaded in paragraphs 32, 33 and 34 above.
- 41 If Transport for NSW is liable to the plaintiff or any group members for loss, then:
- (a) such loss will have been caused in whole (alternatively, in part) by a breach of the duty pleaded in paragraphs 35, 36 and 37 above; and
 - (b) Aecom is liable to Transport for NSW in damages in an amount reflecting any loss suffered by Transport for NSW caused by Aecom's breach.

Particulars

It was reasonably foreseeable that a failure to take care in carrying out one or more of the contractual duties pleaded in paragraphs 35, 36 and 37 above could result in loss and damage to road users, for which Transport for NSW might be held liable or at least joined in proceedings, thereby incurring legal costs.

Breach of contract

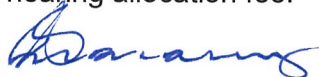
- 42 If Transport for NSW is liable to the plaintiff or any group members for loss, then:
- (a) such loss will have been caused in whole (alternatively, in part) by a breach of the contractual duties pleaded in paragraphs 35, 36 and 37 above; and
 - (b) Aecom is liable to Transport for NSW in an amount reflecting the loss caused by Aecom's breach.

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 this statement of cross-claim has reasonable prospects of success.

I have advised the cross-claimant[s] that court fees may be payable during these proceedings. These fees may include a hearing allocation fee.

Signature



Capacity

Solicitor for the cross-claimant

Date of signature

24 APRIL 2025

NOTICE TO CROSS-DEFENDANTS

If you do not file a defence you will be bound by any judgment or order in the proceedings so far as it is relevant to this cross-claim.

HOW TO RESPOND

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

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

- A legal practitioner.
- LawAccess NSW on 1300 888 529 or at www.lawaccess.nsw.gov.au.
- The court registry for limited procedural information.

You can respond in one of the following ways:

- 1 If you intend to dispute the cross-claim or part of the cross-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 cross-claimant all of the money and interest claimed.
 - Filing an acknowledgement of the claim.
 - 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 cross-claimant that part of the money that is claimed.
 - Filing a defence in relation to the part that you do not believe is owed.

Court forms are available on the UCPR website at <http://www.ucprforms.nsw.gov.au/> or at any NSW court registry.

REGISTRY ADDRESS

Street address	Supreme Court of New South Wales, Sydney Registry, Law Courts Building, Queens Square, 184 Phillip Street, SYDNEY NSW 2000
Postal address	Supreme Court of New South Wales, Sydney Registry, GPO Box 3, SYDNEY NSW 2001
Telephone	1300 679 272

[on separate page]

PARTY DETAILS

A list of parties must be filed and served with this statement of cross-claim.

PARTIES TO THIS CROSS-CLAIM**Cross-claimant**

Transport for NSW ABN 18 804 239 602

Cross-defendants

Brett Andrew Button

Linq Buslines Pty Ltd ACN 131 153 896

Acciona Infrastructure Projects Australia Pty Ltd ACN 000 201 516

Aecom Cost Consulting Pty Ltd ACN 008 657 289

DETAILS ABOUT CROSS-DEFENDANT[S] THAT ARE NEW PARTIES**First cross-defendant**

Name

Brett Andrew Button (MIN: 708188)

Address

c/- The General Manager, Macquarie Correctional Centre
Mudgee-Goolma Road
WELLINGTON NSW 2820

Second cross-defendant

Name

Linq Buslines Pty Ltd ACN 131 153 896

Address

27B Park Street
EAST GRESFORD NSW 2311

Third cross-defendant

Name

Acciona Infrastructure Projects Australia Pty Ltd ACN 000 201 516

Address

Level 3, 11 – 29 Eastern Road
SOUTH MELBOURNE VIC 3205

Fourth cross-defendant

Name

Aecom Cost Consulting Pty Ltd ACN 008 657 289

Address

Level 8, 540 Wickham Street
FORTITUDE VALLEY QLD 4006