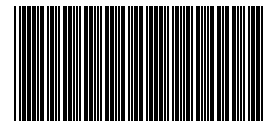




Filed: 7 August 2025 5:40 PM



D00027ANQ6

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
Second Defendant	ACCIONA INFRASTRUCTURE PROJECTS AUSTRALIA PTY LTD
Number of defendants	3

FILING DETAILS

Filed for	ACCIONA INFRASTRUCTURE PROJECTS AUSTRALIA PTY LTD, Defendant 2
Legal representative	JACK JAMES WILLIAM PEMBROKE-BIRSS
Legal representative reference Telephone	02 9330 8160

NOTICE OF LISTING

This matter has been listed for Directions at Supreme Court Sydney on 19 September 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 to Plaintiff's ASOC.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	2024/00338021

TITLE OF PROCEEDINGS

Plaintiff	Adam James Bray
First defendant	Transport for New South Wales (ABN 18 804 239 602)
Second defendant	Acciona Infrastructure Projects Australia Pty Limited (ACN 000 201 516)
Third defendant	Aecom Cost Consulting Pty Limited (ACN 008 657 289)

FILING DETAILS

Filed for	Acciona Infrastructure Projects Australia Pty Limited (ACN 000 201 516), second defendant
Filed in relation to	Plaintiff's amended statement of claim filed 15 July 2025
Legal representative	Jack Pembroke-Birss, Norton Rose Fulbright
Reference	4080601
Contact telephone	Jack Pembroke-Birss, (02) 9330 8160
Contact email	jack.pembroke-birss@nortonrosefulbright.com

PLEADINGS, PARTICULARS & COMMON QUESTIONS

This is the defence of the second defendant ("**Acciona**") to the plaintiff's amended statement of claim filed 15 July 2025 ("**ASOC**"). Below, the terms "**bus**", "**driver**" and "**RTA**" have the meaning as defined in the ASOC.

A. PLEADINGS & PARTICULARS

PLAINTIFF

1. In response to paragraph 1 of the ASOC, Acciona:
 - (a) admits the plaintiff brings this proceeding in his own right;
 - (b) admits the plaintiff purports to bring this proceeding as a representative proceeding pursuant to Part 10 of the *Civil Procedure Act 2005* (NSW); and
 - (c) otherwise does not admit the paragraph.
2. Acciona admits paragraph 2 of the ASOC.

ALLEGATIONS AGAINST TRANSPORT FOR NEW SOUTH WALES

3. Acciona does not admit subparagraphs 3(a), (b) and (d) of the ASOC, which do not make any allegations against Acciona or in support of the case against it, but admits subparagraph 3(c) of the ASOC.
4. Acciona does not admit paragraph 4 of the ASOC, which does not make any allegations against Acciona or in support of the case against it.
5. Acciona does not admit paragraph 5 of the ASOC, which does not make any allegations against Acciona or in support of the case against it.
6. Acciona does not admit paragraph 6 of the ASOC, which does not make any allegations against Acciona or in support of the case against it.

THE ACCIDENT

7. Acciona admits paragraph 7 of the ASOC.
8. In response to paragraph 8 of the ASOC, Acciona:
 - (a) admits the first sentence; and
 - (b) does not admit the second sentence.
9. In response to paragraph 9 of the ASOC, Acciona:
 - (a) admits that the bus was involved in an accident that is the subject of this proceeding ("**accident**");

- (b) says that the accident was caused by the manner in which the driver drove the bus; and
- (c) otherwise does not admit the paragraph.

10. In response to paragraph 10 of the ASOC, Acciona:

- (a) admits that 10 passengers in the bus, including Zachary James Bray, died in the accident; and
- (b) does not know the full details of the accident and, therefore, cannot admit, and does not admit, the remainder of the paragraph.

ALLEGED BREACH BY TRANSPORT FOR NEW SOUTH WALES

11. Acciona does not admit paragraph 11 of the ASOC, which does not make any allegations against Acciona or in support of the case against it.

ALLEGATIONS AGAINST ACCIONA

Formalities

- 12. Acciona admits paragraph 12 of the ASOC.
- 13. Acciona admits paragraph 13 of the ASOC.

Design and Construct Project Deed

- 14. Acciona admits paragraph 14 of the ASOC.
- 15. Acciona admits paragraph 15 of the ASOC.
- 16. As to paragraph 16 of the ASOC, Acciona, in response to:
 - (a) subparagraph (a) – admits that it agreed with RTA (not the world at large) to investigate, design and construct the Project Works in accordance with the terms of the Design and Construct Project Deed;
 - (b) subparagraph (b) – admits that it so warranted to RTA (not the world at large);
 - (c) subparagraph (c) – admits that it so agreed with RTA (not the world at large);
 - (d) subparagraph (d) – admits that it so agreed with RTA (not the world at large);
 - (e) subparagraph (e) – admits that it so accepted vis-à-vis RTA (not the world at large); and
 - (f) otherwise denies the paragraph.
- 17. Acciona admits paragraph 17 of the ASOC.

18. As to paragraph 18 of the ASOC, Acciona, in response to:
- (a) subparagraph (a) – admits it was so obliged, but says the party entitled to enforce that obligation was RTA (not the world at large); and
 - (b) subparagraph (b) – admits that it so acknowledged, but says that acknowledgement was given to RTA (not the world at large).
19. In response to paragraph 19 of the ASOC, Acciona:
- (a) admits that it so warranted to RTA (not the world at large); and
 - (b) otherwise denies the paragraph.

Design and construction of the interchange

20. Acciona admits paragraph 20 of the ASOC and says that, in respect of the design and construction of the interchange, it engaged:

Design subcontractors & consultants

- (a) Sinclair Knight Merz Pty Ltd (ACN 001 024 095), now known as Jacobs Group (Australia) Pty Ltd (ACN 001 024 095) (“**SKM**”), to provide design services;
- (b) SMEC Australia Pty Limited (ACN 065 475 149) (“**SMEC**”) to provide design services and as a geotechnical consultant;

Particulars

SKM and SMEC collaborated as a design joint venture (“**DJV**”).

- (c) Douglas Partners Pty Ltd (ACN 053 980 117) as a geotechnical consultant;
- (d) Golder Associates Pty Ltd (ACN 006 107 857) as a geotechnical consultant;
- (e) HBO+EMTB Urban and Landscape Design Pty Ltd (ACN 103 858 493) (now deregistered) as an urban and landscape design consultant;
- (f) Renzo Tonin & Associates (NSW) Pty Ltd (ACN 117 462 861) as an acoustic consultant;

Construction

- (g) VSL (Australia) Pty Ltd (ACN 000 528 914) to construct bridgeworks (“**VSL Bridgeworks**”);

Independent verifiers

- (h) Davis Langdon Australia Pty Ltd (ACN 008 657 289), now known as Aecom Cost Consulting Pty Ltd (ACN 008 657 289) (the third defendant, “**Aecom**”), as project verifier;

- (i) Graeme P. Walter Pty Ltd (ACN 007 341 031) as proof engineer; and
 - (j) KMH Environmental Pty Ltd (ACN 113 705 025), subsequently known as KM & A Environmental Pty Limited (ACN 113 705 025) (now deregistered), in respect of environmental management,
- (collectively, the “**Subcontractors, Consultants & Verifiers**”).

Characterising the allegations made by the plaintiff

21. In response to paragraph 21 of the ASOC, Acciona:
- (a) repeats its response to paragraphs 5 and 6 of the ASOC;
 - (b) admits that the allegations in paragraphs 5 and 6 of the ASOC include some allegations with respect to the design and construction of the interchange; and
 - (c) otherwise denies the paragraph.
22. In response to paragraph 22 of the ASOC, Acciona:
- (a) repeats its response to paragraph 11 of the ASOC;
 - (b) admits that some of the allegations in paragraph 11 of the ASOC are allegations with respect to the design and construction of the interchange; and
 - (c) otherwise denies the paragraph.

Negligence case against Acciona

Duty

23. Acciona denies paragraph 23 of the ASOC, and says further that:
- (a) the duty of care alleged is not a recognised duty of care and no circumstances have been identified that would warrant recognising a novel duty of care;
 - (b) further or in the alternative, no such duty could be owed by Acciona because:
 - (i) in undertaking any design and construction work of the interchange under the Design and Construct Project Deed (“**D&C Work**”), Acciona acted as an independent contractor of RTA; and, therefore
 - (ii) Acciona’s conduct in undertaking any D&C Work was, as a matter of law, deemed not to be conduct of Acciona, but rather conduct of RTA;

Particulars

*Roads Act 1993 (NSW) (“**Roads Act**”) ss 7, 61, 64, 71 and 253.*

- (c) further or in the alternative, insofar that it is alleged Acciona owed a duty to the plaintiff or any group member to take care not to cause mental harm, the question of whether such a duty exists is assessed by reference to *Civil Liability Act 2002* (NSW) (“**CLA**”) s 32; and
- (d) if (contrary to what is pleaded above) Acciona is found to owe the plaintiff or group members any duty of care, the extent of any such duty is assessed by reference to road users exercising reasonable care for their own safety.

Breach

24. Acciona denies paragraph 24 of the ASOC, and says further that if (contrary to what is pleaded above) Acciona is found to owe any duty of care to the plaintiff or group members, then as to the issue of breach:

- (a) in light of Roads Act s 253 and the fact Acciona undertook the D&C Work as an independent contractor of RTA, the question of breach is assessed by reference to CLA s 43A(3), and Acciona discharged any such duty by:
 - (i) engaging, being reasonably entitled to rely upon, and in fact relying upon, the Subcontractors, Consultants & Verifiers to carry out, review and certify D&C Work; and
 - (ii) constructing (other than the VSL Bridgeworks) the interchange in accordance with design documentation prepared and verified by the Subcontractors, Consultants & Verifiers;
- (b) in the alternative, the question of breach is assessed by reference to CLA s 50, and Acciona discharged any such duty by acting in a manner that (at the time the D&C Work was provided) was widely accepted in Australia by peer professional opinion as competent professional practice;

Particulars

Particulars will be provided after evidence.

- (c) the question of breach is, in any event, determined by reference to road users exercising reasonable care for their own safety;
- (d) by reason of CLA ss 5B and 5C, Acciona was not negligent in failing to take precautions against any alleged risk of harm; and
- (e) no matter the standard by which its conduct is assessed, Acciona committed no breach.

Causation

25. In further response to the claims the plaintiff brings on his own behalf and on behalf of group members (“**Claims**”) against Acciona, Acciona says that if (contrary to what is pleaded above) it is found to owe any duty of care to the plaintiff or group members and is found to have breached any such duty, then as to the question of causation, any alleged harm suffered by the plaintiff or group members (which is not admitted) was, in light of CLA s 5D, not caused by any negligence of Acciona because:
- (a) any such negligence (which is not admitted) was not a necessary condition of the occurrence of the harm;
 - (b) it is not appropriate for the scope of Acciona’s liability (which is not admitted) to extend to the harm so caused;
 - (c) responsibility for the harm should not be imposed on Acciona; and, therefore
 - (d) there should be no finding that any negligence by Acciona caused the harm alleged.

Damage & damages

26. In further response to the Claims against Acciona, Acciona says that if (contrary to what is pleaded above) it is found to owe any duty of care to the plaintiff or group members; is found to have breached any such duty; and is found to have caused any of the harm alleged, then as to the question of damage and damages:

CLA mental harm provisions

- (a) by reason of CLA s 30, to the extent any such Claims are for pure mental harm arising wholly or partly from mental or nervous shock in connection with another person (the “**victim**”) being killed, injured or put in peril by an act or omission of Acciona, a person bringing such a Claim is not entitled to recover damages for pure mental harm unless that person:
 - (i) witnessed, at the scene of the accident, the victim being killed, injured or put in peril; or
 - (ii) is a “close member of the family” of the victim, as defined by CLA s 30(5);
- (b) by reason of CLA s 31, Acciona has no liability to pay damages for pure mental harm resulting from negligence unless the harm consists of a recognised psychiatric illness;

- (c) by reason of CLA s 33, the Court cannot make an award of damages for economic loss for consequential mental harm resulting from negligence unless the harm consists of a recognised psychiatric illness;

MAI Act Part 4 limitations

- (d) by reason of *Motor Accident Injuries Act 2017* (NSW) ("**MAI Act**") s 1.3(2)(g), (4), s 4.1, and s 4.2(2), Part 4 of the MAI Act applies to and in respect of any award of damages for such Claims;

Particulars

To avoid doubt, the aforementioned provisions of the CLA, namely CLA ss 30, 31 and 33, apply and are relied upon even if MAI Act Part 4 applies – see CLA s 3B(1)(e1), (2)(e).

If not MAI Act Part 4 then CLA Part 2

- (e) if (contrary to what is pleaded above) Part 4 of the MAI Act does not so apply, then Part 2 of the CLA applies;

Mitigation

- (f) by reason of MAI Act ss 4.15 and 6.5, and the general law, the plaintiff and group members are under a duty to mitigate any loss, damage and damages, and are not entitled to recover in respect of any loss or damage that could have been reasonably avoided;

No double recovery

- (g) by reason of the general prohibition against double recovery, any damages payable by Acciona are reduced to the extent that the plaintiff or any group member has received statutory benefits or damages under the MAI Act, non-refundable compensation under the *Workers Compensation Act 1987* (NSW), or any other form of compensation;

Seatbelt contributory negligence

- (h) each of the seats on the bus was fitted with an "approved seatbelt" within the meaning of the *Road Rules 2014* (NSW) ("**Road Rules**");
- (i) by reason of Road Rules r 265(1) and (2), each passenger on the bus who was 16 years or older was required to wear a seatbelt properly adjusted and fastened; and

- (j) to the extent any such passenger was not wearing a seatbelt properly adjusted and fastened, then pursuant to MAI Act s 4.17(1) and (2)(c), *Law Reform (Miscellaneous Provisions) Act 1965* (NSW) s 9, and CLA Part 1A Division 8, any damages payable in respect of Claims by or referable to such a passenger should be reduced by such extent as the Court thinks just and equitable.

Positive defences

CLA s 50 defence

27. In further response to the Claims against Acciona, Acciona says that by virtue of CLA s 50, Acciona cannot incur a liability in negligence in respect of those Claims because it acted in a manner that (at the time the D&C Work was provided) was widely accepted in Australia by peer professional opinion as competent professional practice.

Particulars

Particulars will be provided after evidence.

Good faith defence

28. In further response to the Claims against Acciona, Acciona says that:
- (a) to the extent Acciona undertook any D&C Work, Acciona was acting under the direction of RTA (or authorised officers thereof) for the purpose of executing the Roads Act;
 - (b) Acciona undertook such D&C Work in good faith; and, therefore
 - (c) by reason of Roads Act s 256, Acciona cannot be subject to any action, liability, claim or demand in respect of the D&C Work, such that the entirety of the Claims brought against Acciona are statutorily barred and must fail.

ALLEGATIONS AGAINST AECOM

29. Acciona admits paragraphs 25, 26, 27, 28 and 29 of the ASOC.
30. In response to paragraph 30 of the ASOC, Acciona:
- (a) repeats its response to paragraph 21 of the ASOC; and
 - (b) otherwise does not admit the paragraph.
31. In response to paragraph 31 of the ASOC, Acciona:
- (a) repeats its response to paragraph 22 of the ASOC; and
 - (b) otherwise does not admit the paragraph.
32. Acciona does not admit paragraph 32 of the ASOC, which does not make any allegations against Acciona or in support of the case against it.

33. Acciona does not admit paragraph 33 of the ASOC, which does not make any allegations against Acciona or in support of the case against it.

B. COMMON QUESTIONS AND GROUP MEMBERS

34. Acciona does not admit the paragraphs numbered 12, 13 and 14 that appear under the heading “Common Questions and Group Members”.

C. RELIEF

35. In response to the paragraph numbered 15 that appears under the heading “Relief”, Acciona:
- (a) admits that the plaintiff, on his own behalf and on behalf of group members, claims the relief set out at the commencement of the ASOC;
 - (b) denies that the plaintiff or group members are entitled to such relief, or any relief at all; and
 - (c) otherwise denies the paragraph.

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



Capacity

Solicitor on record

Date of signature

7 August 2025