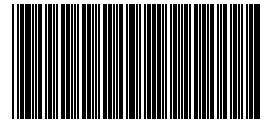




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D00027ANS9

**FIRST CROSS-CLAIM
DEFENCE TO 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
Second Defendant	ACCIONA INFRASTRUCTURE PROJECTS AUSTRALIA PTY LTD
Number of Defendants	3

TITLE OF THIS CROSS-CLAIM

First Cross Claimant	TRANSPORT FOR NSW ABN 18804239602
First Cross Defendant	Brett Andrew Button (MIN: 708188)
Second Cross Defendant	LINQ BUSLINES PTY. LTD.
Number of Cross Defendants	4 Refer to Party Details at rear for full list of parties

FILING DETAILS

Filed for	ACCIONA INFRASTRUCTURE PROJECTS AUSTRALIA PTY LTD, Cross Defendant 3
Filed in relation to	Cross-Claim 1
Legal representative	JACK JAMES WILLIAM PEMBROKE-BIRSS
Legal representative reference	
Telephone	02 9330 8160

NOTICE OF LISTING

This matter has been listed at the same time as the cross claim.

ATTACHMENT DETAILS

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

Defence (UCPR 7A/7B) (Defence to Transport's Cross-Claim.pdf)

[attach.]

Form 7A (version 5)
UCPR 14.3

DEFENCE TO FIRST CROSS-CLAIM

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)

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 Limited (ACN 000 201 516)
Fourth cross-defendant	Aecom Cost Consulting Pty Limited (ACN 008 657 289)

FILING DETAILS

Filed for	Acciona Infrastructure Projects Australia Pty Limited (ACN 000 201 516), third cross-defendant
Filed in relation to	Cross-claimant's cross-claim filed 24 April 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 AND PARTICULARS

This is the defence of the third cross-defendant ("**Acciona**") to the statement of cross-claim ("**Cross-Claim**") filed by the cross-claimant ("**Transport**") on 24 April 2025.

Below, the term:

- "**Design and Construct Project Deed**" and "**RTA**" have the same meaning as in the Cross-Claim; and
- "**bus**" and "**driver**" have the meaning as in the plaintiff's amended statement of claim filed 15 July 2025 ("**ASOC**");
- "**Defence to the ASOC**" means Acciona's defence to the ASOC.

INTRODUCTION

1. Acciona admits paragraph 1 of the Cross-Claim.

BRETT ANDREW BUTTON

2. Acciona admits paragraph 2 of the Cross-Claim.
3. In response to paragraph 3 of the Cross-Claim, Acciona:
 - (a) admits subparagraph (a); and
 - (b) does not admit subparagraph (b).
4. In response to paragraph 4 of the Cross-Claim, Acciona:
 - (a) admits that the accident that is the subject of this proceeding ("**accident**") was caused by the manner in which the driver drove the bus; and
 - (b) does not know the full details of the accident and, therefore, cannot admit, and does not admit, the remainder of the paragraph.
5. In response to paragraph 5 of the Cross-Claim, Acciona:
 - (a) admits that the accident was caused by the manner in which the driver drove the bus;
 - (b) admits the driver breached his duty to the plaintiff; and
 - (c) does not know the full details of the accident and, therefore, cannot admit, and does not admit, the remainder of the paragraph.
6. Acciona does not admit paragraph 6 of the Cross-Claim.

LINQ BUSLINES

7. Acciona does not admit paragraph 7 of the Cross-Claim, which does not make any allegations against Acciona or in support of the case against it.
8. Acciona does not admit paragraph 8 of the Cross-Claim, which does not make any allegations against Acciona or in support of the case against it.
9. Acciona does not admit paragraph 9 of the Cross-Claim, which does not make any allegations against Acciona or in support of the case against it.
10. Acciona does not admit paragraph 10 of the Cross-Claim, which does not make any allegations against Acciona or in support of the case against it.
11. Acciona does not admit paragraph 11 of the Cross-Claim, which does not make any allegations against Acciona or in support of the case against it.
12. Acciona does not admit paragraph 12 of the Cross-Claim, which does not make any allegations against Acciona or in support of the case against it.

ACCIONA

Formalities

13. Acciona admits paragraph 13 of the Cross-Claim.
14. Acciona admits paragraph 14 of the Cross-Claim.

Design and Construct Project Deed

15. Acciona admits paragraph 15 of the Cross-Claim.
16. Acciona admits paragraph 16 of the Cross-Claim.
17. As to paragraph 17 of the Cross-Claim, 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.
18. Acciona admits paragraph 18 of the Cross-Claim.

19. As to paragraph 19 of the Cross-Claim, 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).
20. In response to paragraph 20 of the Cross-Claim, 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

21. Acciona admits paragraph 21 of the Cross-Claim and says that, in respect of the design and construction of the interchange under the Design and Construct Project Deed (“**D&C Work**”), Acciona 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 fourth cross-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**”).

Claims against Acciona

Contribution

Characterising the allegations made by the plaintiff

- 22. In answer to paragraph 22 of the Cross-Claim, Acciona:
 - (a) admits that some elements of the duty of care alleged by the plaintiff as against Transport are in respect of the design and construction of the interchange; and
 - (b) otherwise denies the paragraph.
- 23. In response to paragraph 23 of the Cross-Claim, Acciona:
 - (a) admits that some of the breaches of duty alleged by the plaintiff against Transport are allegations with respect to the design and construction of the interchange;
 - (b) repeats its responses to paragraphs 15 to 22 of the Cross-Claim; and
 - (c) otherwise denies the paragraph.

Duty

- 24. Acciona denies paragraph 24 of the Cross-Claim and repeats paragraph 23 of its Defence to the ASOC.

Breach

- 25. Acciona denies paragraph 25 of the Cross-Claim and repeats paragraph 24 of its Defence to the ASOC.

Claim for contribution

- 26. Acciona denies paragraph 26 of the Cross-Claim, and repeats paragraphs 23 to 28 of its Defence to the ASOC.

Direct negligence***Duty***

27. Acciona denies paragraph 27 of the Cross-Claim and says further, without limiting the general denial, that:
- (a) the existence of any such duty was precluded by Design and Construction Project Deed clauses 22.7(b) and 22.11; and
 - (b) if (contrary to what is pleaded above) Acciona is found to owe Transport any duty of care, then the extent of any such duty is assessed by reference to road users exercising reasonable care for their own safety.

Breach, loss & liability

28. Acciona denies paragraph 28 of the Cross-Claim and says further that if (contrary to what is pleaded above) Acciona is found to owe any duty of care to Transport, then:

Breach

- (a) the question of breach is assessed by reference to road users exercising reasonable care for their own safety, and by reference to *Civil Liability Act 2002* (NSW) (“**CLA**”) s 5O, 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.

- (b) by reason of CLA ss 5B and 5C, Acciona was not negligent in failing to take precautions against any alleged risk of harm;
- (c) no matter the standard by which its conduct is assessed, Acciona committed no breach;

Causation

- (d) any alleged harm suffered by Transport (which is not admitted) was, in light of CLA s 5D, not caused by any negligence of Acciona because:
 - (i) any such negligence (which is not admitted) was not a necessary condition of the occurrence of the harm;
 - (ii) it is not appropriate for the scope of Acciona’s liability (which is not admitted) to extend to the harm so caused;

- (iii) responsibility for the harm should not be imposed on Acciona; and, therefore
- (iv) there should be no finding that any negligence by Acciona caused the harm alleged;

CLA s 50 defence

- (e) by virtue of CLA s 50, Acciona cannot incur a liability in negligence to Transport because Acciona 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.

Breach of contract

- 29. Acciona denies paragraph 29 of the Cross-Claim and says that, in any event, any such claim is time-barred by *Limitation Act 1969* (NSW) ss 14(1)(a) or 16.

Limitation of liability

- 30. In further response to paragraphs 26(b), 28(b) and 29(b), Acciona says that if (contrary to what is pleaded above) it has any liability to Transport at all, the total of all such liability is limited to an amount equal to the "Project Contract Sum" as defined in the Design and Construct Project Deed.

Particulars

Design and Construct Project Deed clauses 6.5(a) and 23.2.

AECOM

- 31. Acciona admits paragraphs 30, 31, 32, 33, 34, 35 and 36 of the Cross-Claim.
- 32. Acciona does not admit paragraphs 37, 38, 39, 40, 41 and 42 of the Cross-Claim, which do not make any allegations against Acciona or in support of the case against it.

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 cross-claim for damages in these proceedings has reasonable prospects of success.

Signature

A handwritten signature in black ink, appearing to be 'Jhi' or similar, written over a faint circular stamp.

Capacity

Solicitor on record

Date of signature

7 August 2025