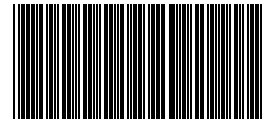




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Form 9
UCPR 9.1

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

TITLE OF THIS CROSS-CLAIM

First Cross-claimant	ACCIONA INFRASTRUCTURE PROJECTS AUSTRALIA PTY LTD
First Cross-defendant	Brett Andrew Button
Second Cross-defendant	Linq Buslines Pty Ltd
Number of cross-defendants	6

FILING DETAILS

Filed for	ACCIONA INFRASTRUCTURE PROJECTS AUSTRALIA PTY LTD, Cross Claimant 1
Filed in relation to	Plaintiff's claim
Legal representative	JACK JAMES WILLIAM PEMBROKE-BIRSS
Legal representative reference	
Telephone	02 9330 8160

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) (Cross Claim (17 September 2025).pdf)

[attach.]

Form 9 (version 6)
UCPR 9.1

SECOND CROSS-CLAIM STATEMENT OF CROSS-CLAIM

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Common Law
List	General
Registry	Sydney
Case number	2024/00338021

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	Acciona Infrastructure Projects Australia Pty Limited (ACN 000 201 516)
First cross-defendant	Brett Andrew Button
Second cross-defendant	Linq Buslines Pty Ltd (ACN 131 153 896)
Third cross-defendant	Jacobs Group (Australia) Pty Ltd (ACN 001 024 095)
Fourth cross-defendant	SMEC Australia Pty Limited (ACN 065 475 149)
Fifth cross-defendant	Aecom Cost Consulting Pty Ltd (ACN 008 657 289)
Sixth cross-defendant	Transport for New South Wales (ABN 18 804 239 602)

FILING DETAILS

Filed for	Acciona Infrastructure Projects Australia Pty Limited (ACN 000 201 516), Cross-claimant
Filed in relation to	Second cross-claim
Legal representative	Jack Pembroke-Birss, Norton Rose Fulbright
Legal representative reference	4080601
Contact name and telephone	Jack Pembroke-Birss, (02) 9330 8160
Contact email	jack.pembroke-birss@nortonrosefulbright.com

RELIEF CLAIMED

Using terms as defined below:

- 1 A declaration that SKM and SMEC are, pursuant to the DJV Subcontract Indemnity, jointly and severally liable to indemnify Acciona in respect of any of the Plaintiff's Claims or Transport's Claims that succeed on the basis of a Design Related Breach.
- 2 A declaration that the Project Verifier is, pursuant to the Deed of Appointment Indemnity, liable to indemnify Acciona in respect of any of the Plaintiff's Claims or Transport's Claims that succeed on the basis of a Certification Related Breach.
- 3 Damages.
- 4 Interest pursuant to *Civil Procedure Act 2005* (NSW) s 100(1).
- 5 Contribution:
 - (a) pursuant to Law Reform 1946 Act s 5 and Law Reform 1965 Act s 12;
 - (b) in equity.
- 6 Costs.

PLEADINGS AND PARTICULARS

The cross-claimant ("**Acciona**") brings this cross-claim in respect of the matters pleaded in the plaintiff's amended statement of claim filed 15 July 2025 ("**ASOC**") and in the first cross-claim statement filed 24 April 2025 ("**Transport's First Cross-Claim**"). Below, the term:

- "**accident**" means the accident that is the subject of these proceedings;
- "**bus**", "**interchange**", "**RTA**" and "**Wine Country Drive**" have their meanings as defined in the ASOC; and
- "**Design and Construct Project Deed**" has the meaning as in Transport's First Cross-Claim.

A. DRIVER

Introduction

1. At all material times, Brett Andrew Button, the first cross-defendant (the "**driver**"), was the driver of the bus.

Negligence of the driver

2. At all material times, the driver owed the plaintiff and group members a duty to exercise reasonable care in the manner he drove the bus so as to avoid causing them harm including personal injury or death, economic loss, and mental harm.
3. The driver breached his duty of care to the plaintiff and group members by driving the bus in a manner dangerous to other persons (the “**Driver’s Breach**”).

Particulars

In paragraph 4 of his defence to Transport’s First Cross-Claim, the driver “admits that he was driving in a manner dangerous to other persons”. Apart from that admitted fact, Acciona does not have direct knowledge of the driver’s conduct. Further particulars will be provided after discovery & evidence.

4. To the extent the plaintiff and group members have suffered harm, such harm was caused, within the meaning of *Civil Liability Act 2002* (NSW) (“**CLA**”) s 5D, by the Driver’s Breach.

Contribution

5. If and solely to the extent that Acciona is liable to the plaintiff or group members in respect of any damage (which is denied), then by reason of the matters pleaded in paragraphs 2 to 4 above:

Statutory contribution

- (a) pursuant to *Law Reform (Miscellaneous Provisions) Act 1946* (NSW) (“**Law Reform 1946 Act**”) s 5 and *Law Reform (Miscellaneous Provisions) Act 1965* (NSW) (“**Law Reform 1965 Act**”) s 12:

- (i) the driver is a tortfeasor who is, or would if sued have been, liable in respect of the same damage; and, therefore
- (ii) Acciona is entitled to recover from the driver a complete indemnity, or alternatively such other amount of contribution as may be found by the Court to be just and equitable having regard to the extent of the driver’s responsibility for the damage;

Equitable contribution

- (b) in the alternative to subparagraph (a) above:
 - (i) Acciona and the driver share a co-ordinate liability to make good that damage; and, therefore
 - (ii) Acciona is entitled to recover equitable contribution from the driver.

B. LINQ BUSLINES

Introduction

6. Linq Buslines Pty Ltd (ACN 131 153 896), the second cross-defendant ("**Linq Buslines**"), is a company within the meaning of the *Corporations Act 2001* (Cth) and able to be sued.

Vicarious liability of Linq Buslines

7. At all material times, Linq Buslines was the employer of the driver.
8. At the time of the accident, the driver was driving a bus provided by, and owned by, Linq Buslines, as part of Linq Busline's business.
9. The Driver's Breach was committed by the driver in the course of his employment by Linq Buslines.
10. In the circumstances pleaded in paragraphs 7 to 9 above, Linq Buslines is vicariously liable for the Driver's Breach.

Particulars

Such vicarious liability arises pursuant to the general law, or *Law Reform (Vicarious Liability) Act 1983* (NSW) s 7. See also *Motor Accident Injuries Act 2017* (NSW) s 6.35.

Freestanding duty owed by Linq

11. At all material times, Linq owed the plaintiff and group members a duty to exercise reasonable care in the manner in which it hired and supervised its employees (including the driver) so as to avoid causing the plaintiff and group members harm including personal injury or death, economic loss, and mental harm.
12. Linq breached its duty of care to the plaintiff and group members by:
 - (a) failing to make all reasonable inquiries of the driver's prior employer so as to determine the driver's competence and suitability to perform the role of a bus driver for Linq; and
 - (b) failing to have in place policies and procedures to prevent the driver from driving under the influence of substances, or otherwise in a manner, that rendered his driving unsafe ("**Linq's Breach**").
13. To the extent the plaintiff and group members have suffered harm, such harm was caused, within the meaning of CLA s 5D, by Linq's Breach.

Contribution

14. If and solely to the extent that Acciona is liable to the plaintiff or group members in respect of any damage (which is denied), then by reason of the matters pleaded in paragraphs 7 to 13 above:

Statutory contribution

- (a) pursuant to the Law Reform 1946 Act s 5 and Law Reform 1965 Act s 12:
- (i) Linq Buslines is a tortfeasor who is, or would if sued have been, liable in respect of the same damage; and, therefore
 - (ii) Acciona is entitled to recover from Linq Buslines a complete indemnity, or alternatively such other amount of contribution as may be found by the Court to be just and equitable having regard to the extent of the Linq Buslines' responsibility for the damage;

Equitable contribution

- (b) in the alternative to subparagraph (a) above:
- (i) Acciona and Linq Buslines share a co-ordinate liability to make good that damage; and, therefore
 - (ii) Acciona is entitled to recover equitable contribution from Linq Buslines.

C. DJV

Parties

15. Jacobs Group (Australia) Pty Ltd (ACN 001 024 095) formerly known as Sinclair Knight Merz Pty Ltd (ACN 001 024 095), the third cross-defendant ("**SKM**"), is a company within the meaning of the *Corporations Act 2001* (Cth) and able to be sued.
16. SMEC Australia Pty Limited (ACN 065 475 149), the fourth cross-defendant ("**SMEC**"), is a company within the meaning of the *Corporations Act 2001* (Cth) and able to be sued.

DJV Subcontract

Introduction

17. On or about 24 November 2010, Acciona, and SKM and SMEC trading as “Hex DJV” (ABN 41 595 022 046) (the “**DJV**”), entered into a contract (the “**DJV Subcontract**”).

Particulars

The DJV Subcontract was titled “Professional Services Contract” with “Contract No: 221354/PSC/001” and “Name of Project: Hunter Expressway Kurri Kurri to Branxton”.

18. It was an express term of the DJV Subcontract that SKM and SMEC were jointly and severally liable for the performance and obligations of the DJV under the DJV Subcontract.

Particulars

Formal Instrument of Agreement, clause 2.

Definitions

Services

19. Clause 2.1 of the DJV Subcontract defined “**Services**” as meaning the services described in, or reasonably inferred from, Annexure Part B to the DJV Subcontract, together with those activities the DJV was required to carry out under the DJV Subcontract, such Services including:
 - (a) responsibility for the detailed engineering design and documentation as defined in the Design and Construct Project Deed, in Exhibit A to the Design and Construct Project Deed titled “Scope of Works & Technical Criteria” (“**SWTC**”), and in the appendices to the SWTC (“**SWTC Appendices**”), including;
 - (i) geometric design of the highway, interchanges (including the interchange where the accident occurred), local roads, pedestrian and cycle paths, and rest areas;
 - (ii) pavement design of the mainline, ramps, interchanges (including the interchange where the accident occurred), local roads, crossovers, paths and rest areas;

- (iii) design of associated road works such as line marking, signage and barriers (including in respect of the interchange where the accident occurred);
 - (iv) design of lighting for highway, intersections and local roads (including for the interchange where the accident occurred);
 - (v) hydrology, hydraulics and water quality improvement design of waterways, cross drainage and water treatment facilities, drainage of the road cross sections and sub surface (including for the interchange where the accident occurred); and
 - (vi) a durability assessment study and report (including in respect of the interchange where the accident occurred);
- (b) design and associated tasks required to prepare and achieve approvals for “Issue for Construction” drawings, specifications and reports (including in respect of the interchange where the accident occurred);
- (c) design deliverables including all roads and pavement design, flood analysis and drainage design, bridges and miscellaneous structures design, road lighting design, durability assessment and assistance in utility coordination (including in respect of the interchange where the accident occurred);
- (d) all necessary management and coordination tasks as required by the Design and Construct Project Deed and relevant to the DJV’s work;
- (e) the detailed planning, coordination and management of the DJV design team and coordination with Acciona’s team, the RTA, the fifth cross-defendant, external stakeholders and other Acciona consultants to develop designs to achieve external approvals and best meet the team objectives; and
- (f) making use of all standards and specifications required under the Design and Construct Project Deed, including the SWTC and the SWTC Appendices.

Other definitions & deeming provisions

20. Clause 2.1 of the DJV Subcontract also defined:

- (a) **“Code”** as meaning the National Code of Practice for the Construction Industry, revised September 2005 and reissued June 2006, as amended and reissued from time to time;
- (b) **“Deliverables”** as meaning the drawings, specifications, sketches, plans, designs, estimates, calculations, reports, models and other information created by the DJV as part of the Services;

- (c) **“Due Skill, Care and Diligence”** as meaning – where the words "exercise due skill, care and diligence" or the like appeared in the DJV Subcontract – the level of skill, care and diligence expected of a professional engineering consultancy practice experienced in projects or activities of a similar nature to the project that was the subject of the DJV Subcontract, namely the Hunter Expressway from Kurri Kurri to Branxton (**“Hunter Expressway Project”**);
 - (d) **“Guidelines”** as meaning the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry, revised September 2005 and reissued June 2006, as amended and reissued from time to time;
 - (e) **“Head Contract”** as meaning an agreement existing between the DJV and the RTA, which included the Design and Construct Project Deed; and
 - (f) **“Preliminary Design”** as meaning any preliminary design included in the documents stated in Annexure Part B to the DJV Subcontract.
21. It was an express term of the DJV Subcontract that, in the documents provided to the DJV that were attachments to the Design and Construct Project Deed, the requirements of and references to the “Contractor” (i.e. Acciona) were deemed to refer to the “Contractor and its Consultants”, which included the DJV in reference to all obligations relevant to the Services.

Particulars

DJV Subcontract, Annexure Part B, heading “General”, second paragraph.

Key terms of the DJV Subcontract

Core promises to perform the Services

22. It was an express term of the DJV Subcontract that the DJV was required to perform the Services in accordance with the DJV Subcontract.

Particulars

Clause 3(a).

23. The DJV acknowledged to Acciona that the DJV had been engaged by Acciona under the DJV Subcontract for the performance of part of Acciona's obligations under the Design and Construct Project Deed.

Particulars

Clause 3(b).

24. The DJV acknowledged to Acciona and agreed with Acciona that the DJV had examined carefully and acquired actual knowledge of the requirements of clauses 12.1 and 12.2 of the Design and Construct Project Deed including but not limited to the:

- (a) meaning of all terms used; and
- (b) requirements of the schedules to, and other clauses of, the Design and Construct Project Deed,

referred to in clauses 12.1 and 12.2 of the Design and Construct Project Deed.

Particulars

Annexure Part E, special condition S6(a).

25. It was an express term of the DJV Subcontract that the DJV would comply with and perform the Services in accordance with all design requirements contained in clauses 12.1 and 12.2 of the Design and Construct Project Deed (including the execution by the DJV of the certificate titled "Subcontractor's Certificate - Design Certification" in the form of Schedule 26 to the Design and Construct Project Deed).

Particulars

Annexure Part E, special condition S6(b).

Representations & agreements

26. The DJV represented to Acciona and agreed with Acciona that the DJV:
- (a) had the necessary skills, experience, resources and professional competence to carry out and successfully complete the Services in accordance with the requirements of the DJV Subcontract;

Particulars

Clause 4.1(a).

- (b) must exercise due skill, care and diligence in the performance of the Services;

Particulars

Clause 4.1(b). The level of skill, care and diligence was as prescribed by the definition of Due Skill, Care and Diligence set out above.

- (c) must at all times employ suitably qualified and experienced personnel to perform the Services;

Particulars

Clause 4.1(c).

- (d) had examined and carefully checked any documents (including Preliminary Design) included in Annexure Part B or as otherwise required by the DJV Subcontract;

Particulars

Clause 4.1(d).

- (e) must do all things necessary in the performance of the Services and its obligations under the DJV Subcontract not to cause or contribute to Acciona being in breach of those obligations under the Design and Construct Project Deed as referenced in those parts of the Design and Construct Project Deed included in Annexure Part B;

Particulars

Clause 4.1(f).

- (f) must comply with all requirements of the DJV Subcontract, all “Statutory Requirements” (as defined in the DJV Subcontract) and all applicable and relevant standards in carrying out the Services;

Particulars

Clause 4.1(h).

- (g) must co-ordinate its performance of the Services with other consultants and contractors engaged by Acciona and copy any written communications with other consultants and contractors to Acciona; and

Particulars

Clause 4.1(i).

- (h) must execute and complete the Services so as the Deliverables will be fit for the purpose ascertainable by reference to Annexure Part B.

Particulars

Clause 4.1(j).

- 27. The DJV acknowledged to Acciona that the representations set out in the previous paragraph remained unaffected notwithstanding:

- (a) that drawings, specifications, designs, calculations, reports and other information (including Preliminary Design) had been included in Annexure Part B;
- (b) any receipt or review of, or comment on, the Deliverables by Acciona; and

- (c) any variation under clause 18 of the DJV Subcontract.

Particulars

Clause 4.2.

DJV acknowledges and agrees to inform itself

- 28. The DJV acknowledged to Acciona, and agreed with Acciona, to have:
 - (a) examined carefully and to have acquired actual knowledge of all information made available by or on behalf of Acciona or the RTA to the DJV;
 - (b) examined all information relevant to the risks, contingencies and other circumstances having an effect on their provision of Services which is obtainable by making all reasonable enquiries; and
 - (c) investigated and inspected the Hunter Expressway Project site and its surroundings.

Particulars

Clause 5(a)(i)-(iii).

- 29. It was an express term of the DJV Subcontract that failure of the DJV to do all or any of the things it acknowledged and agreed to have done (as set out in the previous paragraph) would not relieve the DJV of any of its liabilities or responsibilities under the DJV Subcontract nor entitle the DJV to any compensation.

Particulars

Clause 5(b).

No obligation on Acciona to review

- 30. The DJV agreed with Acciona that:
 - (a) Acciona was not bound to review or comment upon the Deliverables or to check them for errors, omissions or compliance with the requirements of the DJV Subcontract; and
 - (b) Acciona's receipt of, review of, comment on, rejection of, or failure to review or comment on, the Deliverables provided by the DJV would not relieve the DJV from (or alter or affect) the DJV's liabilities or responsibilities.

Particulars

Clause 16.3(c).

Code, Guidelines & quality assurance

31. It was an express term of the DJV Subcontract that the DJV was required to comply with the Code and the Guidelines, but such compliance would not relieve the DJV from the responsibility to perform the DJV Subcontract.

Particulars

Clause 35(a), (d).

32. It was an express term of the DJV Subcontract that the DJV was required to plan, establish, implement and maintain a quality system in accordance with AS9001:2008.

Particulars

Clause 25(a).

Subcontracting

33. It was an express term of the DJV Subcontract that:
- (a) the DJV was prohibited from subcontracting any part of the Services without the prior written approval of Acciona; and
 - (b) any such subcontracting would not relieve the DJV from any liability or obligation under the DJV Subcontract.

Particulars

Clause 31.2.

Indemnity & other liability related provisions

34. The DJV indemnified, and promised to keep indemnified, Acciona, its employees and agents against claims by any person against Acciona in respect of:
- (a) personal injury or death; and
 - (b) loss of, loss of use of (whether total or partial), or damage to, any property, arising out of or as a consequence of the negligent provision of the Services or breach of DJV Subcontract by the DJV ("**DJV Subcontract Indemnity**").

Particulars

Clause 11.3(b).

35. The DJV agreed with Acciona that the operation of Part 4 of the CLA was excluded in relation to all and any rights, obligations and liabilities under the DJV Subcontract whether such rights, obligations or liabilities were sought to be enforced as a breach of contract or a claim in tort or otherwise.

Particulars

Annexure Part E, special condition S3(a).

The DJV designed the interchange

36. The DJV (directly or by subcontractors) designed, and prepared design documentation for the construction of, the Hunter Expressway Project including the interchange.

Claims against the DJV

Indemnity

37. The claims brought against Acciona by:
- (a) the plaintiff (on his own behalf and on behalf of group members) pursuant to the ASOC ("**Plaintiff's Claims**"); and
 - (b) Transport pursuant to Transport's First Cross-Claim ("**Transport's Claims**"), are claims "in respect of personal injury or death" within the meaning of the DJV Subcontract Indemnity.
38. To the extent any of:
- (a) the Plaintiff's Claims succeed on the basis of a breach pleaded in the ASOC at paragraph 24 ("**Plaintiff Asserted Breach**");
 - (b) Transport's Claims succeed on the basis of a breach pleaded in Transport's First Cross-Claim at paragraphs 23, 25, 28 or 29 ("**Transport Asserted Breach**"),
- that relates to the design of the interchange ("**Design Related Breach**"), then such successful claims will have arisen out of, or as a consequence of:
- (c) the negligent provision of the Services by the DJV; or
 - (d) a breach by the DJV of one or more of the terms pleaded above under the heading "Key terms of the DJV Subcontract" ("**DJV Subcontract Key Terms**"),

such that Acciona will, pursuant to the DJV Subcontract Indemnity, be entitled to be indemnified by the DJV to the full extent of any such claims.

General contract claim

39. If and to the extent any of the Plaintiff's Claims or Transport's Claims succeed on the basis of a Design Related Breach, then:
- (a) such claims will have succeeded as a result of, and Acciona's liability in respect of such claims will be a loss caused by, the DJV's breach of one or more of the DJV Subcontract Key Terms; and
 - (b) the DJV will be liable to pay Acciona contractual damages reflecting such loss.

Direct negligence

40. In providing the Services and performing its other obligations under the DJV Subcontract Key Terms, the DJV owed Acciona a duty to exercise reasonable care and skill ("**DJV's Duty of Care owed to Acciona**").
41. If and to the extent any of the Plaintiff's Claims or Transport's Claims succeed on the basis of a Design Related Breach, then:
- (a) such claims will have succeeded as a result of, and Acciona's liability in respect of such claims will be a loss caused by, a breach by the DJV of the DJV's Duty of Care owed to Acciona; and
 - (b) the DJV will be liable to pay Acciona tortious damages reflecting such loss.

Contribution

Plaintiff's Claims

42. If Acciona owed the plaintiff and group members the duty pleaded in ASOC paragraph 23 (or at all) (which is denied) then, by undertaking design work under the DJV Subcontract, the DJV owed the plaintiff and group members a duty:
- (a) to exercise reasonable care and skill in the performance of that work; and
 - (b) at least equivalent in scope to (or, alternatively, coextensive in part with) that owed by Acciona,
- (the "**DJV's Duty of Care owed to the Plaintiff/Group Members**").
43. If and solely to the extent the plaintiff establishes any Design Related Breach, then:
- (a) it will constitute a breach by the DJV of the DJV's Duty of Care owed to the Plaintiff/Group Members; and
 - (b) to the extent the plaintiff and group members have suffered harm, such harm will have been caused, within the meaning of CLA s 5D, by that breach.

44. If and solely to the extent that Acciona is liable to the plaintiff or group members in respect of any damage (which is denied), then by reason of the matters pleaded in paragraphs 42 and 43 above:

Statutory contribution

- (a) pursuant to Law Reform 1946 Act s 5 and Law Reform 1965 Act s 12:
- (i) the DJV is a tortfeasor who would if sued have been liable in respect of the same damage; and, therefore
 - (ii) Acciona is entitled to recover from the DJV a complete indemnity, or alternatively such other amount of contribution as may be found by the Court to be just and equitable having regard to the extent of the DJV's responsibility for the damage;

Equitable contribution

- (b) in the alternative to subparagraph (a) above:
- (i) Acciona and the DJV share a co-ordinate liability to make good that damage; and, therefore
 - (ii) Acciona is entitled to recover equitable contribution from the DJV.

Transport's Claims

45. The DJV warranted to RTA that in:

- (a) performing design work under the DJV Subcontract, including the detail engineering design and documentation as defined in the Design and Construct Project Deed, SWTC, and SWTC Appendices; and
- (b) providing any certificate under clause 12.2(h) of the Design and Construct Project Deed,

the DJV:

- (c) owed a duty of care to RTA;
- (d) would exercise reasonable skill and care; and

- (e) was aware that RTA would be relying upon the skill and judgment of the DJV in performing such work,
(the “**DJV Warranties to RTA**”).

Particulars

The DJV Warranties to RTA were express and in writing recorded in a deed poll titled “Designer’s Deed of Covenant” in the form of Annexure Part J to the DJV Subcontract.

46. If Acciona owed Transport the duty pleaded in Transport’s First Cross-Claim at paragraph 27 (or at all) (which is denied) then, by undertaking design work under the DJV Subcontract, and by giving the DJV Warranties to RTA, the DJV owed Transport a duty:
- (a) to exercise reasonable care and skill in the performance of that work; and
 - (b) at least equivalent in scope to (or, alternatively, coextensive in part with) that owed by Acciona,
- (the “**DJV’s Duty of Care owed to Transport**”).
47. To the extent Transport establishes any Design Related Breach, then:
- (a) it will constitute a breach by the DJV of the DJV’s Duty of Care owed to Transport; and
 - (b) to the extent Transport has suffered harm, such harm will have been caused, within the meaning of CLA s 5D, by that breach.
48. If and solely to the extent that Acciona is liable to Transport in respect of any damage (which is denied), then by reason of the matters pleaded in paragraphs 45 to 47 above:

Statutory contribution

- (a) pursuant to Law Reform 1946 Act s 5 and Law Reform 1965 Act s 12:
 - (i) the DJV is a tortfeasor who would if sued have been liable in respect of the same damage; and, therefore
 - (ii) Acciona is entitled to recover from the DJV a complete indemnity, or alternatively such other amount of contribution as may be found by the Court to be just and equitable having regard to the extent of the DJV’s responsibility for the damage;

Equitable contribution

- (b) in the alternative to subparagraph (a) above:
- (i) Acciona and the DJV share a co-ordinate liability to make good that damage; and, therefore
 - (ii) Acciona is entitled to recover equitable contribution from the DJV.

D. PROJECT VERIFIER**Introduction**

49. Aecom Cost Consulting Pty Limited (ACN 008 657 289) formerly known as Davis Langdon Australia Pty Ltd (ACN 008 657 289), the fifth cross-defendant (“**Project Verifier**”), is a company within the meaning of the *Corporations Act 2001* (Cth) and able to be sued.

Deed of Appointment**Introduction**

50. On or about 29 October 2010, Acciona, the Project Verifier, and the RTA entered into a contract (the “**Deed of Appointment**”).

Particulars

The full title of the written Deed of Appointment was “Deed of Appointment of Project Verifier”.

51. It was an express term of the Deed of Appointment that any right conferred by the Project Verifier on Acciona and the RTA pursuant to the Deed of Appointment was a right that benefitted Acciona and the RTA jointly and severally.

Particulars

Clause 1.2(b).

Definitions

52. Clause 1.1 of the Deed of Appointment defined:
- (a) “**Project Documents**” as the Design and Construct Project Deed, and its schedules and exhibits (including appendices); and
 - (b) “**Services**” as meaning those services listed in Schedule 2 to the Deed of Appointment, including the functions, obligations, duties and services that the Project Documents contemplated would be discharged by the Project Verifier (“**Project Verifier Services**”).

Key terms of the Deed of Appointment

Appointment as Project Verifier

53. Under the Deed of Appointment, Acciona and the RTA appointed the Project Verifier to perform the Project Verifier Services, and the Project Verifier confirmed its acceptance of that appointment.

Particulars

Clause 2.1.

Core promises to perform the Project Verifier Services

54. The Project Verifier warranted to Acciona and the RTA that the Project Verifier would carry out and perform the Project Verifier Services in accordance with the Deed of Appointment.

Particulars

Clause 3.2(e)(i).

55. The Project Verifier warranted to Acciona and the RTA that in performing the Project Verifier Services, the Project Verifier would act:
- (a) independently of Acciona and the RTA;
 - (b) honestly, diligently and reasonably; and
 - (c) with the degree of professional, knowledge, skill, expertise, experience and care which would be reasonably expected of an expert professional providing services similar to the Project Verifier Services within the construction industry generally and the design and construction of major engineering works in particular.

Particulars

Clause 4.1(a), (b), (c).

Acknowledgements & warranties

56. The Project Verifier acknowledged to Acciona and the RTA that the:
- (a) Project Verifier had received a copy of the Project Documents and had read, and was familiar with, the terms of those documents to the extent they related to the Project Verifier Services; and

- (b) Project Verifier's obligations extended to and included the obligations, functions, duties and services of the "Project Verifier" under the Project Documents.

Particulars

Clause 3.1.

- 57. The Project Verifier acknowledged to Acciona and the RTA that they:
 - (a) were relying upon the knowledge, skill, expertise and experience of the Project Verifier in the performance of its obligations under the Deed of Appointment; and
 - (b) may suffer loss if the Project Verifier did not perform its obligations in accordance with the requirements of the Deed of Appointment.

Particulars

Clause 3.2(a).

- 58. The Project Verifier warranted to Acciona and the RTA that, in performing the Project Verifier Services, the Project Verifier 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 be reasonably expected of an expert professional providing services similar to the Project Verifier Services within the design and construction industry generally and the design and construction of major engineering works in particular.

Particulars

Clause 3.2(b).

- 59. The Project Verifier acknowledged to Acciona and the RTA that they were entitled to and would rely on any certificate or other document signed or given by the Project Verifier under or pursuant to Deed of Appointment or the Project Documents.

Particulars

Clause 3.2(d).

Personnel

60. It was an express term of the Deed of Appointment that the Project Verifier was required to provide personnel with a sufficient degree of knowledge, skill, expertise and experience to perform the Project Verifier's obligations under the Deed of Appointment.

Particulars

Clause 3.3(a).

Quality assurance

61. It was an express term of the Deed of Appointment that the Project Verifier:
- (a) was required to implement a quality system in accordance with ISO9000 and ISO9001, and otherwise in a form reasonably acceptable to Acciona and the RTA to ensure compliance of the Project Verifier Services with the requirements of the Deed of Appointment; and
 - (b) was not relieved of any requirement to perform any obligation under the Deed of Appointment as a result of compliance with the quality assurance requirements of the Deed of Appointment, or any acts or omissions of Acciona or the RTA with respect to the quality assurance requirements of the Deed of Appointment.

Particulars

Clause 3.5.

Subcontracting

62. It was an express term of the Deed of Appointment that the Project Verifier:
- (a) remained responsible for the performance of the Project Verifier Services in accordance with the Deed of Appointment, notwithstanding any subcontracting out of the performance of the Project Verifier Services; and
 - (b) was liable for the acts and omissions of any subcontractor as if they were acts and omissions of the Project Verifier.

Particulars

Clause 3.4(b).

Indemnity & other liability related provisions

63. It was an express term of the Deed of Appointment that the Project Verifier is liable for, and indemnifies Acciona against, any liability, loss, claim, expense or damage which Acciona may pay, suffer or incur in respect of:

- (a) any damage to or loss of property; or
- (b) death of or injury to any person,

insofar as the liability, loss, claim, expense or damage arises out of the negligent act, error or omission of the Project Verifier, its employees, agents, subcontractors or consultants ("**Deed of Appointment Indemnity**").

Particulars

Clause 6.8.

64. It was an express term of the Deed of Appointment that:

- (a) the Deed of Appointment Indemnity was a continuing obligation, separate and independent from the other obligations of the parties to the Deed of Appointment;
- (b) the Deed of Appointment Indemnity survived termination, completion or expiration of the Deed of Appointment; and
- (c) it is not necessary for Acciona to incur expense or to make any payment before enforcing the Deed of Appointment Indemnity.

Particulars

Clause 9.9.

65. The Project Verifier agreed with Acciona that the operation of Part 4 of the CLA was excluded in relation to all and any rights, obligations and liabilities under the Deed of Appointment whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or a claim in tort or otherwise.

Particulars

Clause 9.16(a).

The Project Verifier certified the interchange

66. On or about 7 November 2014, the Project Verifier issued the RTA with a certificate in the form of Schedule 16 to the Design and Construct Project Deed (**“Construction Completion Certificate”**) pursuant to which the Project Verifier certified that, except in respect of the “RS Walls Non-Conformances” (as defined in the Construction Completion Certificate):
- (a) Acciona had completed construction of the Hunter Expressway Project, including the interchange, in accordance with the “Design Documentation” (as defined in the Design and Construct Project Deed) that Acciona was entitled to use for construction purposes under clause 12.2 of the Design and Construct Project Deed;
 - (b) the design used by Acciona for construction purposes was in accordance with the requirements of Design and Construct Project Deed including the SWTC;
 - (c) the construction complied with the requirements of the Design and Construct Project Deed including the SWTC; and
 - (d) each of the following designs was in accordance with the requirements of the Design and Construct Project Deed including the SWTC:
 - (i) structural design;
 - (ii) pavement design;
 - (iii) geometric road design;
 - (iv) environmental works design;
 - (v) urban and landscape design;
 - (vi) geotechnical design;
 - (vii) services design;
 - (viii) stormwater and drainage design (both permanent and temporary);
 - (ix) safety design;
 - (x) durability design;
 - (xi) operation and maintenance design;
 - (xii) signage, furniture and roadside furniture design; and
 - (xiii) all other elements of the “Project Works” (as defined in the Design and Construct Project Deed) carried out by Acciona.

Claims against the Project Verifier

Indemnity

67. The Plaintiff's Claims and Transport's Claims are claims "in respect of death of or injury to any person" within the meaning of the Deed of Appointment Indemnity.
68. To the extent any of:
 - (a) the Plaintiff's Claims succeed on the basis of a Plaintiff Asserted Breach;
 - (b) Transport's Claims succeed on the basis of a Transport Asserted Breach, that relates to an aspect of the design or construction of the Hunter Expressway Project that was certified by the Project Verifier ("**Certification Related Breach**"), then such successful claims will have arisen out of the negligent act, error or omission of the Project Verifier (or its employees, agents, subcontractors or consultants) such that Acciona will, pursuant to the Deed of Appointment Indemnity, be entitled to be indemnified by the Project Verifier to the full extent of any such claims.

General contract claim

69. If and to the extent any of the Plaintiff's Claims or Transport's Claims succeed on the basis of a Certification Related Breach, then:
 - (a) such claims will have succeeded as a result of, and Acciona's liability in respect of such claims will be a loss caused by, the Project Verifier's breach of one or more of the terms pleaded above under the heading "Key terms of the Deed of Appointment" ("**Deed of Appointment Key Terms**"); and
 - (b) the Project Verifier will be liable to pay Acciona contractual damages reflecting such loss.

Direct negligence

70. In providing the Project Verifier Services and performing its other obligations under the Deed of Appointment Key Terms, the Project Verifier owed Acciona a duty to exercise reasonable care and skill ("**Project Verifier's Duty of Care owed to Acciona**").
71. If and to the extent any of the Plaintiff's Claims or Transport's Claims succeed on the basis of a Certification Related Breach, then:
 - (a) such claims will have succeeded as a result of, and Acciona's liability in respect of such claims will be a loss caused by, a breach by the Project Verifier of the Project Verifier's Duty of Care owed to Acciona; and

- (b) the Project Verifier will be liable to pay Acciona tortious damages reflecting such loss.

Contribution

Plaintiff's Claims

72. If Acciona owed the plaintiff and group members the duty pleaded in ASOC paragraph 23 (or at all) (which is denied) then, by undertaking project verification work under the Deed of Appointment, the Project Verifier owed the plaintiff and group members a duty:
 - (a) to exercise reasonable care and skill in the performance of that work; and
 - (b) at least equivalent in scope to (or, alternatively, coextensive in part with) that owed by Acciona,
 (the "**Project Verifier's Duty of Care owed to the Plaintiff/Group Members**").
73. If and solely to the extent the plaintiff establishes any Certification Related Breach, then:
 - (a) it will constitute a breach by the Project Verifier of the Project Verifier's Duty of Care owed to the Plaintiff/Group Members; and
 - (b) to the extent the plaintiff and group members have suffered harm, such harm will have been caused, within the meaning of CLA s 5D, by that breach.
74. If and solely to the extent that Acciona is liable to the plaintiff or group members in respect of any damage (which is denied), then by reason of the matters pleaded in paragraphs 72 and 73 above:

Statutory contribution

- (a) pursuant to Law Reform 1946 Act s 5 and Law Reform 1965 Act s 12:
 - (i) the Project Verifier is a tortfeasor who is liable in respect of the same damage; and, therefore
 - (ii) Acciona is entitled to recover from the Project Verifier a complete indemnity, or alternatively such other amount of contribution as may be found by the Court to be just and equitable having regard to the extent of the Project Verifier's responsibility for the damage;

Equitable contribution

- (b) in the alternative to subparagraph (a) above:
 - (i) Acciona and the Project Verifier share a co-ordinate liability to make good that damage; and, therefore
 - (ii) Acciona is entitled to recover equitable contribution from the Project Verifier.

Transport's Claims

- 75. If Acciona owed Transport the duty pleaded in Transport's First Cross-Claim at paragraph 27 (or at all) then, by undertaking project verification work under the Deed of Appointment, the Project Verifier owed Transport a duty:
 - (a) to exercise reasonable care and skill in the performance of that work; and
 - (b) at least equivalent in scope to (or, alternatively, coextensive in part with) that owed by Acciona,
 (the "**Project Verifier's Duty of Care owed to Transport**").
- 76. If and solely to the extent Transport establishes any Certification Related Breach, then:
 - (a) it will constitute a breach by the Project Verifier of the Project Verifier's Duty of Care owed to Transport; and
 - (b) to the extent Transport has suffered harm, such harm will have been caused, within the meaning of CLA s 5D, by that breach.
- 77. If and to solely the extent that Acciona is liable to Transport in respect of any damage (which is denied), then by reason of the matters pleaded in paragraphs 75 and 76 above:

Statutory contribution

- (a) pursuant to Law Reform 1946 Act s 5 and Law Reform 1965 Act s 12:
 - (i) the Project Verifier is a tortfeasor who would if sued have been liable in respect of the same damage; and, therefore
 - (ii) Acciona is entitled to recover from the Project Verifier a complete indemnity, or alternatively such other amount of contribution as may be found by the Court to be just and equitable having regard to the extent of the Project Verifier's responsibility for the damage;

Equitable contribution

- (b) in the alternative to subparagraph (a) above:
- (i) Acciona and the Project Verifier share a co-ordinate liability to make good that damage; and, therefore
 - (ii) Acciona is entitled to recover equitable contribution from the Project Verifier.

E. TRANSPORT**Introduction**

78. Transport for New South Wales (ABN 18 804 239 602), the sixth cross-defendant ("**Transport**"), is a corporation constituted by s 3C(1) of the *Transport Administration Act 1988* (NSW) and able to be sued.
79. Transport is responsible for any liabilities incurred by the RTA.

Particulars

Transport Legislation Amendment Act 2011 (NSW) s 183(2),
Transport Administration Act 1988 (NSW) Schedule 7, item 218(2).

Context

80. As at 11 June 2023 (the date of the accident):
- (a) Wine Country Drive was administered and maintained by Transport; and
 - (b) Transport had responsibility for the design, construction, management and maintenance of Wine Country Drive including the interchange.
81. Transport owed 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* (NSW)) in respect of Wine Country Drive and the interchange.
82. At the time of the design and construction of Wine Country Drive and the interchange, the duty pleaded in the previous paragraph rested with RTA.

Contribution***RTA duty***

83. If Acciona owed the plaintiff and group members the duty pleaded in ASOC paragraph 23 (or at all) (which is denied) then, in undertaking the work of:
- (a) initiating the Hunter Expressway Project and issuing a reference design for it;

- (b) negotiating and entering the Design and Construct Project Deed;
- (c) negotiating and entering the Deed of Appointment; and
- (d) setting the SWTC and other parameters within which the Hunter Expressway Project (including the interchange) was to be designed, constructed and verified,

(and in the circumstance pleaded in paragraph 82 above), the RTA owed the plaintiff and group members a duty:

- (e) to exercise reasonable care and skill in the performance of that work; and
- (f) at least equivalent in scope to (or, alternatively, coextensive in part with) that owed by Acciona,

(“RTA’s Duty of Care owed to the Plaintiff/Group Members”).

Transport duty

84. If Acciona owed the plaintiff and group members the duty pleaded in ASOC paragraph 23 (or at all) (which is denied) then, in undertaking the work set out in paragraphs 80 and 81 above (and in the circumstance pleaded in paragraph 81 above), Transport owed the plaintiff and group members a duty:

- (a) to exercise reasonable care and skill in the performance of that work; and
- (b) at least equivalent in scope to (or, alternatively, coextensive in part with) that owed by Acciona,

(“Transport’s Duty of Care owed to the Plaintiff/Group Members”).

Breaches

85. If and solely to the extent the plaintiff establishes any Plaintiff Asserted Breach that is not a Design Related Breach or Certification Related Breach, then:

- (a) it will constitute a breach by:
 - (i) the RTA of RTA’s Duty of Care owed to the Plaintiff/Group Members;
or
 - (ii) Transport of Transport’s Duty of Care owed to the Plaintiff/Group Members; and
- (b) to the extent the plaintiff and group members have suffered harm, such harm will have been caused, within the meaning of CLA s 5D, by one or more such breaches.

Conclusion

86. If and solely to the extent that Acciona is liable to the plaintiff or group members in respect of any damage (which is denied), then by reason of the matters pleaded in paragraphs 79 to 85 above:

Statutory contribution

- (a) pursuant to Law Reform 1946 Act s 5 and Law Reform 1965 Act s 12:
- (i) Transport is a tortfeasor who is liable in respect of the same damage; and, therefore
 - (ii) Acciona is entitled to recover from Transport a complete indemnity, or alternatively such other amount of contribution as may be found by the Court to be just and equitable having regard to the extent of Transport's responsibility for the damage;

Equitable contribution

- (b) in the alternative to subparagraph (a) above:
- (i) Acciona and Transport share a co-ordinate liability to make good that damage; and, therefore
 - (ii) Acciona is entitled to recover equitable contribution from Transport.

Particulars

As Transport is responsible for any liabilities of RTA, recovery of contribution is only sought as against Transport. To avoid doubt, however, recovery of contribution is sought as against Transport having regard to its responsibility for the damage as well as the RTA's responsibility for the damage (for which Transport would now be liable).

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 that court fees may be payable during these proceedings. These fees may include a hearing allocation fee.

Signature



Capacity

Solicitor

Date of signature

17 September 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	Law Courts Building, 184 Phillip Street, Sydney NSW 2000
Postal address	GPO Box 3, Sydney NSW 2001
Telephone	1300 679 272

PARTY DETAILS

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

PARTIES TO THIS CROSS-CLAIM

Cross-claimant

Acciona Infrastructure Projects Australia Pty Limited (ACN 000 201 516)

Cross-defendants

Brett Andrew Button

Linq Buslines Pty Ltd (ACN 131 153 896)

Jacobs Group (Australia) Pty Ltd (ACN 001 024 095)

SMEC Australia Pty Limited (ACN 065 475 149)

Aecom Cost Consulting Pty Ltd (ACN 008 657 289)

Transport for New South Wales (ABN 18 804 239 602)

DETAILS ABOUT CROSS-DEFENDANTS THAT ARE NEW PARTIES

Third cross-defendant

Name Jacobs Group (Australia) Pty Ltd (ACN 001 024 095)

Address Level 13
452 Flinders Street
Melbourne VIC 3000

Fourth cross-defendant

Name SMEC Australia Pty Limited (ACN 065 475 149)

Address Level 7
40 Mount Street
North Sydney NSW 2060