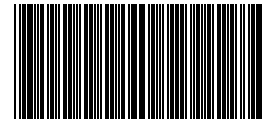




Filed: 18 September 2025 10:45 AM



D0002871NO

Defence to Amended Statement of 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

FILING DETAILS

Filed for	AECOM COST CONSULTING PTY LTD, Defendant 3
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Legal representative	Gregory McKenzie
Legal representative reference	
Contact name and telephone	Natale Ilardo
Your reference	GJM:2129148

ATTACHMENT DETAILS

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Lodge Document, along with any other documents listed below, were filed by the Court.

Defence to Amended Statement of Claim (Defence to 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
Number of defendants	3

FILING DETAILS

Filed for	AECOM Cost Consulting Pty Limited , third defendant
Filed in relation to	Plaintiff's Amended Statement of Claim
Legal representative	Greg McKenzie Lander & Rogers
Legal representative reference	PCN: P0000755 VIC Ref: GJM:2129148
Contact name and telephone	Greg McKenzie Tel. +61 3 9269 9000
Contact email	nilardo@landers.com.au

HEARING DETAILS

If the proceedings do not already have a listing date, they are to be listed at

PLEADING AND PARTICULARS

The third defendant, AECOM Cost Consulting Pty Ltd ("**ACC**") pleads and responds to the Amended Statement of Claim ("**ASOC**") filed 15 July 2025 as follows, adopting the defined terms therein unless stated otherwise.

1. In answer to paragraph 1 of the ASOC, ACC:
 - (a) admits that the plaintiff brings these proceedings in his own right;
 - (b) admits that the plaintiff seeks to bring these proceedings as representative proceedings pursuant to Part 10 of the *Civil Procedure Act 2005* (NSW); and

- (c) otherwise does not know and therefore does not admit the allegations in paragraph 1 of the ASOC.

2. ACC admits paragraph 2 of the ASOC.

ALLEGATIONS AGAINST THE FIRST DEFENDANT

3. In answer to paragraph 3 of the ASOC, ACC:

- (a) admits sub-paragraph (a);
- (b) in response to sub-paragraph (b):
 - (i) admits that as at 11 June 2023, Wine Country Drive was a road running from Branxton to Cessnock, also known as M220, and a 'main road' within the meaning of s 46 of the *Roads Act 1993* (NSW), which is administered and maintained by TfNSW; and
 - (ii) otherwise does not know and therefore does not admit the allegations;
- (c) admits sub-paragraph (c) on the basis that the reference to 'Wine Country Road' is understood to be a reference to Wine Country Drive;
- (d) in response to sub-paragraph (d):
 - (i) says that Wine Country Drive was, at all material times, classified as a main road for the purposes of s 46 of the *Roads Act*; and
 - (ii) otherwise does not admit the paragraph.

4. In answer to paragraph 4 of the ASOC, ACC:

- (a) repeats paragraph 3 above; and
- (b) otherwise admits the paragraph.

5. In answer to paragraph 5 of the ASOC, ACC:

- (a) repeats and relies on its response to paragraph 30 below; and
- (b) otherwise does not plead to the paragraph as it contains no allegations against ACC.

6. In answer to paragraph 6 of the ASOC, ACC:

- (a) repeats and relies on its response to paragraph 30 below; and
- (b) otherwise does not plead to the paragraph as it contains no allegations against ACC.

THE ACCIDENT

7. ACC admits paragraph 7 of the ASOC.

8. ACC admits paragraph 8 of the ASOC.
9. In answer to paragraph 9 of the ASOC, ACC:
 - (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 driver drove the bus, including that the driver was driving:
 - (i) under the influence of an opioid painkiller, Tramadol;
 - (ii) dangerously and negligently, including at excessive and unreasonable speed, causing him to lose control of the bus and cause the accident including the plaintiffs' injuries, losses and damage; and
 - (c) otherwise does not admit the paragraph.
10. In answer to paragraph 10 of the ASOC, ACC repeats paragraph 9 of this Defence and otherwise:
 - (a) admits that 10 passengers in the bus, including Zachary James Bray, died in the accident; and
 - (b) does not know and therefore cannot admit the balance of the paragraph.
11. In answer to paragraph 11 of the ASOC, ACC:
 - (a) repeats and relies on its response to paragraph 31 below; and
 - (b) otherwise does not plead to the paragraph as it contains no allegations against ACC.

ALLEGATIONS AGAINST THE SECOND DEFENDANT

12. ACC admits paragraph 12 of the ASOC.
13. ACC admits paragraph 13 of the ASOC.
14. ACC admits paragraph 14 of the ASOC.
15. In answer to paragraph 15 of the ASOC:
 - (a) ACC admits the paragraph;
 - (b) says the Design and Construct Project Deed also contains the following defined terms, amongst others:
 - (i) “Proof Engineer”, which means the person or persons specified in Item 11 of Schedule 1 or such other person or persons as may be engaged from

time to time by the Contractor to perform the role of Proof Engineer, and approved by RTA;

- (ii) “Project Verifier”, which means the person specified in Item 12 of Schedule 1 or such other person(s) as may be engaged by RTA and the contractor in accordance with a Deed of Appointment of Project Verifier;
 - (c) relies on the entirety of the Design and Construct Project Deed as if pleaded herein in full.
16. In answer to paragraph 16 of the ASOC, ACC:
- (a) admits that Acciona agreed with RTA to the matters alleged in sub-paragraphs (a), (c) – (e) and warranted to RTA the matters alleged in sub-paragraph (b); and
 - (b) otherwise does not plead to the paragraph as it contains no allegations against ACC.
17. ACC admits paragraph 17 of the ASOC.
18. In answer to paragraph 18 of the ASOC, ACC:
- (a) admits Acciona was obliged to RTA in the terms pleaded in sub-paragraph (a);
 - (b) admits Acciona made the acknowledgment to RTA in the terms pleaded in sub-paragraph (b); and
 - (c) otherwise does not plead to the paragraph as it contains no allegations against ACC.
19. In answer to paragraph 19 of the ASOC, ACC:
- (a) admits Acciona warranted to RTA the matters pleaded in the paragraph;
 - (b) says that Acciona further warranted to RTA Acciona is responsible for, and assumes the risk of, and responsibility for, all increased costs and any damage, expense, loss, liability or delay that Acciona or anyone claiming through Acciona may suffer or incur arising out of or in connection with the design of the Project Works in accordance with the Concept Design (as defined) and the construction of the Project Works in accordance with the Design Documentation;
 - (c) otherwise does not plead to the paragraph as it contains no allegations against ACC.
20. ACC admits paragraph 20 of the ASOC and says that, in respect of the design and construction of the interchange, Acciona engaged:

Design subcontractors and 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 Ltd ACN 065 475 149 (“**SMEC**”) to provide design services and as a geotechnical consultant;

Particulars

- (i) SKM and SMEC operated 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 subcontractors

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

Independent verifiers

- (h) Graeme P. Walter Pty Ltd ACN 007 341 031 as Proof Engineer;
- (i) ACC (then known as Davis Langdon) as Project Verifier;
- (j) KMH Environmental Pty Ltd ACN 113 705 025, subsequently known as KM & A Environmental Pty Ltd ACN 113 705 025 (now deregistered), in respect of environmental management.

- 21. ACC does not plead to paragraph 21 of the ASOC as it contains no allegations against ACC.
- 22. ACC does not plead to paragraph 22 of the ASOC as it contains no allegations against ACC.
- 23. ACC does not plead to paragraph 23 of the ASOC as it contains no allegations against ACC.
- 24. ACC does not plead to paragraph 24 of the ASOC as it contains no allegations against ACC.

ALLEGATIONS AGAINST THE THIRD DEFENDANT

- 25. ACC admits paragraph 25 of the ASOC.
- 26. ACC admits paragraph 26 of the ASOC.

27. In answer to paragraph 27 of the ASOC:

- (a) ACC admits the paragraph;
- (b) says the appointment of ACC was by each of the “Other Parties” (defined to mean RTA and Acciona);
- (c) relies on the entirety of the Deed of Appointment of Project Verifier as if pleaded herein in full; and
- (d) says further that the Verification Services (as defined in paragraph 27(b) of the ASOC) included, but was not limited to, obligations under cl 12.2(b), (d), and (h) of the Design and Construct Project Deed in respect of the preparation of Design Documentation (as defined in the Design and Construct Project Deed).

28. In answer to paragraph 28 of the ASOC, ACC:

- (a) admits the paragraph, save that the ‘other parties’ to which reference is made in the acknowledgments and warranties were the “Other Parties” (as defined to mean RTA and Acciona);
- (b) relies on the entirety of the Deed of Appointment of Project Verifier as if pleaded herein in full; and
- (c) says further that ACC was required to subcontract to GHD the design verification part of the Verification Services.

Particulars

- (i) Deed of Appointment of Project Verifier, clause 3.4(c)

29. In answer to paragraph 29 of the ASOC, ACC:

- (a) admits that on or around 7 November 2014, ACC issued a certificate containing, amongst other things, the information set out in the certificate in Schedule 16 of the Design and Construct Project Deed (“**Schedule 16 Certificate**”) and relies on the entirety of the Schedule 16 Certificate as if pleaded herein in full;
- (b) otherwise does not admit the paragraph; and
- (c) says further that under the Design and Construct Project Deed, other parties were required to certify that the Design Documentation complies with all of the requirements of the Design and Construct Project Deed, including the Scope of Works and Technical Criteria:
 - (i) ACC, in reliance upon services it was required to subcontract to GHD, was required by cl 12.2(h)(i) to issue a certificate in the form of Schedule 15 to the Design and Construct Project Deed;

- (ii) any Subcontractor involved in the preparation of a design was required by cl 12.2(h)(ii) to issue a certificate in respect of the design in the form of Schedule 26 to the Design and Construct Project Deed;
- (iii) Acciona was required by cl 12.2(h)(iii) to issue a certificate in the form of Schedule 20 to the Design and Construct Project Deed; and
- (iv) the Proof Engineer was required by cl 12.2(h)(iv) to issue a certificate in the form of Schedule 27 to the Design and Construct Project Deed.

30. In answer to paragraph 30 of the ASOC, ACC:

- (a) 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
- (b) denies the paragraph.

31. In answer to paragraph 31 of the ASOC, ACC:

- (a) admits that the allegations in paragraph 11 of the ASOC include some allegations with respect to the design and construction of the interchange; and
- (b) denies the paragraph.

32. ACC denies paragraph 32 of the ASOC and says further:

- (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 ACC because:
 - (i) in undertaking any Verification Services in respect of the interchange, ACC acted as an independent contractor of RTA; and, therefore
 - (ii) ACC's conduct in undertaking the Verification Services in respect of the interchange was, as a matter of law, deemed not to be conduct of ACC, but rather conduct of RTA;

Particulars

- (i) Sections 7, 61, 64, 71 and 253 of the *Roads Act 1993* (NSW).
- (c) further, or in the alternative, in so far as it is alleged ACC 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 s 32 of the *Civil Liability Act 2002* (NSW); and
- (d) if, in the alternative and contrary to what is pleaded above, ACC is found to owe the plaintiff or any group members any duty of care, the extent of such duty is

assessed by reference to road users exercising reasonable care for their own safety.

33. ACC denies paragraph 33 of the ASOC and says further, in the alternative, that if, contrary to what is pleaded above, ACC is found to owe any duty of care to the plaintiff or group members, then as to the issue of breach:

- (a) the question of breach is determined by reference to road users exercising reasonable care for their own safety (as to which, ACC repeats paragraph 9(b) above and paragraph 36 below); and
- (b) ACC was not negligent in failing to take precautions against any alleged risk of harm, by reason of ss 5B and 5C of the *Civil Liability Act*.

34. In the alternative and in further answer to the whole of the claims pleaded against ACC in the ASOC, as to the question of causation, ACC:

- (a) repeats and relies on the matters alleged in paragraph 9(b) above;
- (b) says further that any negligence of ACC (which is denied) was not a necessary condition of the occurrence of any harm suffered by the plaintiff or group members (which is not admitted), within the meaning of s 5D(1)(a) of the *Civil Liability Act*; and
- (c) says further, or in the alternative, that it is not appropriate for the scope of any liability of ACC to the plaintiff or group members (which is denied) to extend to the harm so caused, within the meaning of s 5D(1)(b) of the *Civil Liability Act*.

35. In the alternative and in further answer to the whole of the claims pleaded against ACC in the ASOC, as to the question of damage, ACC:

Mental harm provisions under the Civil Liability Act

- (a) by reason of s 30 of the *Civil Liability Act*, to the extent any claims against ACC 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 ACC, 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 s 30(5) of the *Civil Liability Act*;

- (b) by reason of s 31 of the *Civil Liability Act*, ACC 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 s 33 of the *Civil Liability Act*, 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**”) ss 4.1 and 4.2, Part 4 of the MAI Act applies to and in respect of any award of damages to the plaintiff or any group member in respect of the claims pleaded against ACC in the ASOC;
- (e) in the alternative, if Part 4 of the MAI Act does not so apply, then Part 2 of the *Civil Liability Act* applies; and

No double recovery

- (f) by reason of the prohibition against double recovery, any damages payable by ACC are to be 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.

POSITIVE DEFENCES

Contributory negligence

36. In further answer to the whole of the claims pleaded in the ASOC against ACC, ACC says:

- (a) each of the seats on the bus was fitted with an “approved seatbelt” within the meaning of the *Road Rules 2014* (NSW) (“**Road Rules**”);
- (b) by reason of Road Rules r 265(1) and (2), each passenger of the bus who was 16 years or older was required to wear a seatbelt properly adjusted and fastened; and
- (c) 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 Part 1A Division 8 of the *Civil Liability Act*, any damages payable in respect of any claims against ACC pleaded in the ASOC by or referable to any such a passenger should be reduced by such extent as the Court thinks just and equitable.

Civil Liability Act s 50 defence

37. In further answer to the whole of the claims pleaded in the ASOC against ACC, ACC says that by virtue of s 50 of the *Civil Liability Act*, ACC cannot incur a liability in negligence in respect of those claims because it acted in a manner that, at the time the Verification Services were performed, was widely accepted in Australia by peer professional opinion as competent professional practice.

Particulars

- (i) Particulars will be provided after evidence.

Good faith defence

38. In further answer to the whole of the claims pleaded in the ASOC against ACC:
- (a) to the extent ACC performed the Verification Services, ACC was acting under the direction of RTA (or authorised officers thereof) for the purposes of executing the *Roads Act*;
 - (b) ACC performed such Verification Services in good faith; and, therefore
 - (c) by reason of s 256 of the *Roads Act*, ACC cannot be subject to any action, liability, claim or demand in respect of the Verification Services, such that the entirety of the claims against ACC are statutorily barred and must fail.

COMMON QUESTIONS AND GROUP MEMBERS

39. In answer to the paragraph of the ASOC under the heading “Common Questions and Group Members” erroneously numbered 12, ACC:
- (a) repeats paragraphs 1 and 10 of this Defence; and
 - (b) otherwise does not admit the paragraph.
40. In answer to the paragraph of the ASOC under the heading “Common Questions and Group Members” erroneously numbered 13, ACC:
- (a) repeats paragraphs 1 and 10 of this Defence; and
 - (b) otherwise does not admit the paragraph.
41. In answer to the paragraph of the ASOC under the heading “Common Questions and Group Members” erroneously numbered 14, ACC:
- (a) does not admit the paragraph; and
 - (b) says, in the alternative, if there are common questions of law or fact, they would include those questions raised by the pleadings in relation to causation, breach, damage, and the positive defences pleaded in paragraphs 33 to 38 above.

RELIEF

42. ACC denies that the plaintiff is entitled to the relief claimed on his own behalf and on behalf of the Group Members, or any relief at all.

SIGNATURE OF LEGAL REPRESENTATIVE
--

I certify under clause 4 of Schedule 2 of 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

18/09/2025

FURTHER DETAILS ABOUT FILING PARTY**Third defendant:**

Name: **AECOM COST CONSULTING PTY LIMITED**
ACN 008 657 289

Address: Level 8, 540 Wickman Street
FORTITUDE VALLEY QLD 4006

Legal representative for filing party:

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