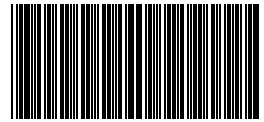




Filed: 18 September 2025 10:55 AM



D0002872HX

**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	AECOM COST CONSULTING PTY LTD, Cross Defendant 4
Filed in relation to	Cross-Claim 1
Legal representative	Gregory McKenzie
Legal representative reference	
Contact name and telephone	Natale Ilardo
Your reference	GJM:2129148

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 First 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
Number of defendants	3

TITLE OF THIS CROSS-CLAIM

Cross-claimant	TRANSPORT FOR NEW SOUTH WALES ABN 18 804 239 602
First cross-defendant	BRETT ANDREW BUTTON
Number of cross-defendants	4

FILING DETAILS

Filed for	AECOM Cost Consulting Pty Limited , fourth cross-defendant
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 fourth cross-defendant, AECOM Cost Consulting Pty Ltd ("**ACC**") pleads and responds to the First Cross-Claim Statement of Cross-Claim ("**First Cross-Claim**") filed 24 April 2025 as follows, adopting the defined terms therein and in ACC's Defence to the Amended Statement of Claim, unless stated otherwise or the context requires.

1. ACC does not plead to paragraph 1 of the First Cross-Claim as it contains no allegations against ACC.

Brett Andrew Button

2. ACC admits paragraph 2 of the First Cross-Claim.
3. In answer to paragraph 3 of the First Cross-Claim, ACC:
 - (a) admits sub-paragraph (a); and
 - (b) does not admit sub-paragraph (b).
4. In answer to paragraph 4 of the First Cross-Claim, ACC:
 - (a) admits Mr Button was under the influence of an opioid painkiller, Tramadol;
 - (b) admits Mr Button was driving dangerously and negligently, including at excessive and unreasonable speed, causing him to lose control of the bus; and
 - (c) otherwise does not know and cannot admit the paragraph.
5. ACC does not plead to paragraphs 5 to 6 of the First Cross-Claim as they contain no allegations against ACC.

Linq Buslines

6. ACC does not plead to paragraphs 7 to 12 of the First Cross-Claim as they contain no allegations against ACC.

Acciona Infrastructure Projects Australia Pty Ltd

7. ACC admits paragraph 13 of the First Cross-Claim.
8. ACC admits paragraph 14 of the First Cross-Claim.
9. ACC admits paragraph 15 of the First Cross-Claim.
10. In answer to paragraph 16 of the First Cross-Claim:
 - (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.
- 11. In answer to paragraph 17 of the First Cross-Claim, 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.
- 12. ACC admits paragraph 18 of the First Cross-Claim.
- 13. In answer to paragraph 19 of the First Cross-Claim, 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.
- 14. In answer to paragraph 20 of the First Cross-Claim, 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.
- 15. ACC admits paragraph 21 of the First Cross-Claim 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.

- 16. ACC does not plead to paragraphs 22 to 29 of the First Cross-Claim as they contain no allegations against ACC.

AECOM Cost Consulting Pty Ltd

- 17. ACC admits paragraph 30 of the First Cross-Claim.
- 18. ACC admits paragraph 31 of the First Cross-Claim.
- 19. In answer to paragraph 32 of the First Cross-Claim:
 - (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 32(b) of the First Cross-Claim) included, but was not limited to, obligations under cll 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)

20. In answer to paragraph 33 of the First Cross-Claim, 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)

21. In answer to paragraph 34 of the First Cross-Claim, ACC:

- (a) admits that on or around 7 November 2014, ACC issued a certificate containing, amongst other things, the information set out 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.

22. In answer to paragraph 35 of the First Cross-Claim, ACC:

- (a) admits that the duty of care alleged by the plaintiff as against Transport for NSW includes allegations with respect to the design and construction of the interchange; and
 - (b) denies the paragraph.
- 23. In answer to paragraph 36 of the First Cross-Claim, ACC:
 - (a) admits that the breaches of duty alleged by the plaintiff include allegations with respect to the design and construction of the interchange; and
 - (b) denies the paragraph.
- 24. In answer to paragraph 37 of the First Cross-Claim, ACC:
 - (a) denies the paragraph; and
 - (b) repeats paragraph 32 of its Defence to the ASOC.
- 25. In answer to paragraph 38 of the First Cross-Claim, ACC:
 - (a) denies the paragraph; and
 - (b) repeats paragraph 33 to 38 of its Defence to the ASOC.
- 26. In answer to paragraph 39 of the First Cross-Claim, ACC:
 - (a) denies the paragraph; and
 - (b) repeats paragraph 32 to 38 of its Defence to the ASOC.

Direct Negligence

- 27. In answer to paragraph 40 of the First Cross-Claim, ACC:
 - (a) denies the paragraph;
 - (b) says further, or in the alternative, that the existence of any such duty was precluded by clause 9.16(b) of the Deed of Appointment of Project Verifier;
 - (c) says further, or in the alternative, if ACC is found to owe Transport for NSW any duty of care:
 - (i) the extent of any such duty is assessed by reference to road users exercising reasonable care for their own safety; and
 - (ii) ACC repeats paragraphs 9(c) and 36 of its Defence to the ASOC.
- 28. In answer to paragraph 41 of the First Cross-Claim, ACC:
 - (a) denies the paragraph;
 - (b) in respect of the question of breach:

- (i) the question of breach is determined by reference to road users exercising reasonable care for their own safety (as to which, ACC repeats paragraphs 9(b) and 36 of its Defence to the ASOC); and
 - (ii) 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*.
- (c) in respect of the question of causation, ACC:
- (i) repeats and relies on the matters alleged in paragraph 9(b) of its Defence to the ASOC;
 - (ii) 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
 - (iii) 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*;
- (d) in further answer, ACC says that by virtue of s 5O 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.

Breach of Contract

29. In answer to paragraph 42 of the First Cross-Claim, ACC:

- (a) denies the paragraph; and
- (b) says further or in the alternative that any such claim is time-barred by *Limitation Act 1969* (NSW) ss 14(1)(a) or (16).

Good faith defence

30. In further answer to the whole of the First Cross-Claim as 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.

Limitation of Liability

- 31. Further and in the alternative, in answer to the whole of the First Cross-Claim as against ACC, ACC says that if it is liable to Transport for NSW (which is denied), ACC's liability is limited in aggregate to \$20 million.

Particulars

- (i) Clause 6.1 of the Deed of Appointment of Project Verifier.

Contributory negligence

- 32. Further and in the alternative, if it is established that Transport for NSW suffered loss and damage as alleged and the ACC is liable for this loss and damage (which is denied), ACC says:
 - (a) the plaintiff alleges that Transport for NSW conducted construction and post construction audits that were inadequate to identify the alleged unsafe design and construction of the interchange;
 - (b) if the plaintiff's allegations are correct (which is not admitted), such loss and damage was caused or contributed to by acts or omissions of Transport for NSW; and
 - (c) any damages that Transport for NSW may recover from ACC should be reduced by virtue of its contributory negligence, to such extent as the Court thinks just and equitable having regard to Transport for NSW's share in responsibility for the damage, pursuant to s 9(1) of the *Law Reform (Miscellaneous Provisions) Act 1965* (NSW) and at law.

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

Signature



Capacity

Solicitor on record

Date of signature

18/09/2025