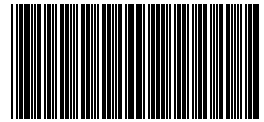




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D0002AMC3W

SECOND 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	ACCIONA INFRASTRUCTURE PROJECTS AUSTRALIA PTY LTD ACN 000201516
First Cross Defendant	Brett Andrew Button
Second Cross Defendant	Linq Buslines Pty Ltd
Number of Cross Defendants	6 Refer to Party Details at rear for full list of parties

FILING DETAILS

Filed for	Jacobs Group (Australia) Pty Ltd, Cross Defendant 3
Filed in relation to	Cross-Claim 2
Legal representative	Alexander McKellar
Legal representative reference	
Telephone	03 8601 4504

AFFIDAVIT

Deponent Name	Alex McKellar
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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) (Jacobs and SMEC - Defence to the Second Cross Claim (Executed).pdf)

[attach.]

Form 7A (version 5)
UCPR 14.3

DEFENCE TO SECOND CROSS-CLAIM

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Common Law Division
List	General List
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 Ltd ACN 000 201 516
Third defendant	Aecom Cost Consulting Pty Ltd ACN 008 657 289

TITLE OF SECOND CROSS-CLAIM

Cross-claimant	Acciona Infrastructure Projects Australia Pty Ltd 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 000 201 516
Sixth cross-defendant	Transport for New South Wales ABN 18 804 239 602

FILING DETAILS

Filed for	Jacobs Group (Australia) Pty Ltd ACN 001 024 095, Third cross-defendant SMEC Australia Pty Limited ACN 065 475 149 Fourth cross-defendant
Filed in relation to	Cross-claimant's second cross-claim
Legal representative	Alex McKellar, HFW Australia for the Third cross-defendant Matthew Smith, Clyde & Co for the Fourth cross-defendant

Legal representative reference	HFW reference: 92929/11 Clyde & Co reference: 10762844
Contact name and telephone	Alex McKellar (03) 8601 4504 Steven Lurie (02) 9210 4404
Contact email	alex.mckellar@hfw.com steven.lurie@clydeco.com

PLEADINGS AND PARTICULARS

This is the joint defence of the third cross-defendant, Jacobs Group (Australia) Pty Ltd (**Jacobs**, defined as “SKM” in the Second Cross Claim) and the fourth cross-defendant, SMEC Australia Pty Limited (**SMEC**) to the second cross-claim statement of cross-claim (**Second Cross-Claim**) filed 17 September 2025.

The headings and terms defined within the Second Cross-Claim are adopted herein unless otherwise defined. This approach has been adopted solely to assist the Court and the parties to the dispute and is not in any way an admission by Jacobs or SMEC to any part of the Second Cross-Claim.

To the extent allegations are made in the pleadings concerning "group members" such group members have not yet been identified. It is not possible to plead to allegations concerning group members until the group members have been identified.

A. DRIVER

Introduction

1 Jacobs and SMEC admit paragraph 1.

Negligence of the driver

2 In answer to paragraph 2, Jacobs and SMEC:

- a. admit the paragraph in so far as it relates to the plaintiff;
- b. say, in so far as the paragraph relates to “group members”, that until the “group members” are identified, it is not possible to say whether the driver owed them a duty of care to avoid causing them harm;
- c. say that, in so far as the “group members” allege they have suffered compensable mental harm, the limitation on recovery in section 30 of the *Civil Liability Act 2002* (NSW) (**CLA**) applies.

3 In answer to paragraph 3, Jacobs and SMEC:

- a. admit the paragraph in so far as it relates to the plaintiff;

- b. do not admit the balance of the paragraph and rely upon and repeat paragraph 2b. above.

4 Jacobs and SMEC admit paragraph 4.

Contribution

5 Jacobs and SMEC admit paragraph 5.

B. LINQ BUSLINES

Introduction

6 Jacobs and SMEC admit paragraph 6.

Vicarious Liability of Linq Buslines

7 Jacobs and SMEC admit paragraphs 7 to 10.

8 In answer to paragraph 11, Jacobs and SMEC:

- a. admit the paragraph in so far as it relates to the plaintiff;
- b. say, in so far as the paragraph relates to "group members", that until the "group members" are identified, it is not possible to say whether the driver owed them a duty of care to avoid causing them harm;
- c. say that, in so far as the "group members" allege they have suffered compensable mental harm, the limitation on recovery in section 30 of the CLA applies.

9 In answer to paragraph 12, Jacobs and SMEC:

- a. admit the paragraph in so far as it relates to the plaintiff;
- b. do not admit the balance of the paragraph and rely upon and repeat paragraph 2b. above.

10 Jacobs and SMEC admit paragraph 13.

Contribution

11 Jacobs and SMEC admit paragraph 14.

C. DJV

Parties

12 Jacobs and SMEC admit paragraph 15.

13 Jacobs and SMEC admit paragraph 16.

DJV Subcontract

Introduction

14 Jacobs and SMEC admit paragraph 17.

15 Jacobs and SMEC admit paragraph 18.

Definitions

Services

16 Jacobs and SMEC admit paragraph 19 and otherwise rely on the terms of the DJV Subcontract as if set out in full.

Other definitions & deeming provisions

17 In answer to paragraph 20, Jacobs and SMEC:

- a. admit subparagraphs 20(a) to (d) and paragraph 20(f);
- b. deny subparagraph 20(e); and
- c. otherwise rely on the terms of the DJV Subcontract as if set out in full.

18 In answer to paragraph 21, Jacobs and SMEC:

- a. admit the paragraph; and
- b. otherwise rely on the terms of the DJV Subcontract as if set out in full.

Key terms of the DJV Subcontract

Core promises to perform Services

19 In answer to paragraph 22, Jacobs and SMEC:

- a. admit the paragraph; and
- b. otherwise rely on the terms of the DJV Subcontract as if set out in full.

20 In answer to paragraph 23, Jacobs and SMEC:

- a. admit the paragraph; and
- b. otherwise rely on the terms of the DJV Subcontract as if set out in full.

21 In answer to paragraph 24, Jacobs and SMEC:

- a. deny the paragraph; and
- b. otherwise rely on the terms of the DJV Subcontract as if set out in full.

22 In answer to paragraph 25, Jacobs and SMEC:

- a. admit the paragraph; and
- b. otherwise rely on the terms of the DJV Subcontract as if set out in full.

Representations & agreements

- 23 In answer to paragraph 26, Jacobs and SMEC:
- a. admit the paragraph;
 - b. otherwise rely on the terms of the DJV Subcontract as if set out in full.
- 24 In answer to paragraph 27, Jacobs and SMEC:
- a. admit the paragraph; and
 - b. otherwise rely on the terms of the DJV Subcontract as if set out in full.

DJV acknowledges and agrees to inform itself

- 25 In answer to paragraph 28, Jacobs and SMEC:
- a. admit subparagraphs 28(a) and 28(b);
 - b. deny subparagraph 28(c);
 - c. otherwise rely on the terms of the DJV Subcontract as if set out in full.
- 26 In answer to paragraph 29, Jacobs and SMEC:
- a. refer to and repeat their response to paragraph 28;
 - b. deny the paragraph;
 - c. otherwise rely on the terms of the DJV Subcontract as if set out in full.

No obligation on Acciona to review

- 27 In answer to paragraph 30, Jacobs and SMEC:
- a. admit the paragraph;
 - b. otherwise rely on the terms of the DJV Subcontract as if set out in full.

Code Guidelines & quality assurance

- 28 In answer to paragraph 31, Jacobs and SMEC:
- a. admit the paragraph;
 - b. otherwise rely on the terms of the DJV Subcontract as if set out in full.
- 29 In answer to paragraph 32, Jacobs and SMEC:
- a. admit the paragraph;
 - b. otherwise rely on the terms of the DJV Subcontract as if set out in full.

Subcontracting

30 In answer to paragraph 33, Jacobs and SMEC:

- a. admit the paragraph;
- b. otherwise rely on the terms of the DJV Subcontract as if set out in full.

Indemnity & other liability related provision

31 In answer to paragraph 34, Jacobs and SMEC:

- a. admit the paragraph but say that any liability the DJV had under the DJV Subcontract to indemnify the cross-claimant (**Acciona**) is reduced proportionally to the extent that an act or omission of Acciona or its employees or agents may have contributed to the loss, damage, injury or death;

Particulars

Clause 11.3

- b. otherwise rely on the terms of the DJV Subcontract as if set out in full.

32 In answer to paragraph 35, Jacobs and SMEC:

- a. admit the paragraph;
- b. otherwise rely on the terms of the DJV Subcontract as if set out in full.

The DJV designed the interchange

33 Jacobs and SMEC do not admit paragraph 36 and say further, or in the alternative, that the allegation is vague and embarrassing and liable to be struck out on the basis that the elements of the Hunter Expressway Project alleged to have been designed, and the design documentation alleged to have been prepared, by the DJV, are not particularised.

Claims against the DJV

Indemnity

34 In answer to paragraph, Jacobs and SMEC:

- a. admit that the Plaintiff's Claims and Transport's Claims are claims "in respect of personal injury or death" within the meaning of the DJV Subcontract Indemnity; and
- b. deny that the DJV Subcontract Indemnity is otherwise engaged.

35 Jacobs and SMEC deny paragraph 38.

General contract claim

36 In answer to paragraph 39, Jacobs and SMEC:

- a. deny the paragraph;
- b. say further or in the alternative that Acciona's claim founded on contract constitutes an action on a cause of action that, by operation of *Limitation Act 1969* (NSW) s 14(1)(a), is not maintainable.

Particulars

Any breach of the DJV Subcontract (which is denied) occurred when the Services were provided, which was prior to certification of the works as complete on 7 November 2014 (as pleaded at paragraph 66 of the Second Cross Claim), and therefore must have occurred more than 6 years prior to filing of the Second Cross-Claim on 17 September 2025.

Direct negligence

37 Jacobs and SMEC deny paragraph 40.

38 In answer to paragraph 41, Jacobs and SMEC:

- a. deny the paragraph;
- b. say that:
 - i. each of them is a professional within the meaning of s5O of the CLA (**s5O**); and
 - ii. the matters in respect of which they are sued in these proceedings arise from the provision by them of a professional service within the meaning of s5O;
- c. say that in providing the professional service impugned in these proceedings, they acted in a manner that (at the time the services were provided) was widely accepted in Australia by peer professional opinion as competent professional practice;
- d. say that, in the premises, and pursuant to s5O, they do not incur a liability in negligence as alleged or at all.

Contribution

Plaintiff's Claim

39 Jacobs and SMEC deny paragraph 42.

40 In answer to paragraph 43, Jacobs and SMEC:

- a. deny the paragraph; and

b. repeat paragraphs 38b. – 38d. above

41 in further answer to subparagraph 43(b), Jacobs and SMEC:

- a. deny that any negligence by them was a necessary condition of the occurrence of any harm suffered by the Plaintiff or Group Members, within the meaning of s 5D(1)(a) of the CLA;
- b. say further, or in the alternative, that it is not appropriate for the scope of any liability of theirs to extend to the harm so caused, within the meaning of s 5D(1)(b) of the CLA; and
- c. say further that the accident was caused by the circumstances and manner in which the driver drove the bus, including in driving the bus:
 - i. while under the influence of an opioid painkiller, Tramadol and doing so knowingly;
 - ii. dangerously and negligently, including at excessive speed; and
 - iii. in such manner as caused him to lose control of the bus and caused the accident and such injury loss and damage as was suffered.

42 Jacobs and SMEC deny paragraph 44.

Transport's Claims

43 In answer to paragraph 45, Jacobs and SMEC:

- a. deny subparagraph (a) and say that:
 - i. the DJV warranted that in performing the Design Work specified in the Schedule for the purposes of its obligations under the "Designer's Deed of Covenant" in the form of Annexure Part J to the DJV Subcontract (**Deed of Covenant**) and providing any certificate under clause 12.2(h) of the Design and Construct Project Deed it:
 - 1. would owe a duty of care to the RTA;
 - 2. would exercise reasonable skill and care; and
 - 3. was aware that the RTA would be relying upon the skill and judgement of the Designer in performing the Design Work;
 - ii. Design Work was defined in the Schedule to the Deed of Covenant to include the detailed design and documentation as defined in the Design and Construct Deed, SWTC and SWTC Appendices;

- b. say further that the warranty contained in the Deed of Covenant was only to the RTA (and not the world-at-large);
- c. otherwise rely on the terms of the Deed of Covenant as if set out in full.

44 Jacobs and SMEC deny paragraph 46.

45 Jacobs and SMEC deny paragraph 47.

46 Jacobs and SMEC deny paragraph 48.

D. PROJECT VERIFIER

Introduction

47 Jacobs and SMEC admit paragraph 49.

Deed of Appointment

48 Jacobs and SMEC admit paragraphs 50 to 65.

The Project Verifier certified the interchange

49 Jacobs and SMEC admit paragraph 66.

Claims against the Project Verifier

50 Jacobs and SMEC do not plead to and make no admission in respect of paragraphs 67 to 77.

E. TRANSPORT

Introduction

51 Jacobs and SMEC admit paragraphs 78 and 79.

Context

52 Jacobs and SMEC admit paragraphs 80 to 82.

Contribution

53 Jacobs and SMEC do not plead to and make no admission in respect of paragraphs 83 to 86.

SIGNATURE OF LEGAL REPRESENTATIVE

~~This defence does not require a certificate under clause 4 of Schedule 2 to the [Legal Profession Uniform Law Application Act 2014](#).~~

I certify under clause 4 of Schedule 2 to the [Legal Profession Uniform Law Application Act 2014](#) that there are reasonable grounds for believing on the basis of provable facts and a

reasonably arguable view of the law that the defence to the claim for damages in these proceedings has reasonable prospects of success.

Signature



Capacity

Solicitor on record for the Third Cross-Defendant to the
Second Cross-Claim

Date of signature

16/1/2016

Signature



Capacity

Solicitor on record for the Fourth Cross-Defendant to the
Second Cross-Claim, by his partner, S. Lurie

Date of signature

16/1/2016

FURTHER DETAILS ABOUT FILING PARTY

Filing party

Name **Jacobs Group (Australia) Pty Ltd ACN 001 024 095**
Address c/o HFW Australia,
Level 10, 126 Phillip Street
Sydney, NSW 2000

Frequent user identifier [include if the filing party is a registered frequent user]

Legal representative for filing party

Name Alex McKellar
Practising certificate number P0021746
Firm HFW Australia
Address Level 10, 126 Phillip Street
Sydney, NSW 2000

Telephone (03) 8601 4504
Fax (03) 8601 4555
Email alex.mckellar@hfw.com
Electronic service address alex.mckellar@hfw.com

Filing party

Name **SMEC Australia Pty Limited ACN 065 475 149**
Address c/o Clyde & Co
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Sydney, NSW 2000

Frequent user identifier [include if the filing party is a registered frequent user]

Legal representative for filing party

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