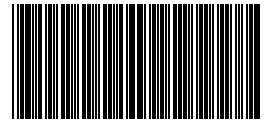




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SECOND CROSS-CLAIM DEFENCE TO CROSS CLAIM

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	TRANSPORT FOR NSW, Cross Defendant 6
Filed in relation to	Cross-Claim 2
Legal representative	Brian Moroney
Legal representative reference	
Telephone	9232 2255
Your reference	BGM:500392

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 2XC - TfNSW.pdf)

[attach.]

Form 7A (version 5)
UCPR 14.3

SECOND CROSS-CLAIM DEFENCE OF SIXTH CROSS-DEFENDANT

COURT DETAILS

Court	Supreme Court of NSW
Division	Common Law
List	General
Registry	Sydney
Case number	2024/338021

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	Acciona Infrastructure Projects Australia Pty Limited (ACN 000 201 516)
First cross-defendant	Brett Andrew Button
Number of cross-defendants	6

FILING DETAILS

Filed for	Transport for New South Wales (ABN 18 804 239 602), Sixth cross-defendant
Filed in relation to	Second cross-claim
Legal representative	Brian Moroney, Moray & Agnew
Legal representative reference	BGM:500392
Contact name and telephone	Brian Moroney, + 61 2 9232 2255
Contact email	bmoroney@moray.com.au

PLEADINGS AND PARTICULARS

The sixth cross-defendant, Transport for NSW, responds as follows to the allegations in the second cross-claim, brought by Acciona Infrastructure Projects Australia Pty (**Acciona**). Defined terms are as used in the second cross-claim, unless otherwise indicated.

A. DRIVER

Introduction

- 1 Transport for NSW admits the allegation in paragraph 1.

Negligence of the driver

- 2 In response to paragraph 2, Transport for NSW:
- (a) admits that the driver owed passengers on the bus 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;
 - (b) admits that the driver owed the plaintiff and other group members who were not passengers on the bus a duty to avoid causing them harm including mental harm; and
 - (c) otherwise does not admit the allegation in the paragraph.

- 3 In response to paragraph 3, Transport for NSW:
- (a) admits that the driver breached a duty of care to the plaintiff and group members by driving the bus in a manner dangerous to other persons;
 - (b) repeats paragraph 2 above; and
 - (c) otherwise does not admit the allegation in the paragraph.

- 4 In response to paragraph 4, Transport for NSW:
- (a) admits that to the extent the plaintiff and group members have suffered harm, such harm was caused, within the meaning of s 5D of the *Civil Liability Act 2002* (NSW), by the driver's breach of a duty of care;
 - (b) repeats paragraph 3 above; and
 - (c) otherwise does not admit the allegation in the paragraph.

Contribution

- 5 Transport for NSW does not plead to paragraph 5, which does not contain any allegation against it.

B. LINQ BUSLINES

Introduction

- 6 Transport for NSW admits the allegation in paragraph 6.

Vicarious liability of Linq Buslines

- 7 Transport for NSW admits the allegation in paragraph 7.
- 8 Transport for NSW admits the allegation in paragraph 8.
- 9 In response to paragraph 9, Transport for NSW:
- (a) admits that the breach of a duty of care by the driver was committed in the course of his employment by Linq Buslines Pty Ltd;
 - (b) repeats paragraph 3 above; and
 - (c) otherwise does not admit the allegation in the paragraph.

- 10 In response to paragraph 10, Transport for NSW:
- (a) admits that Linq Buslines Pty Ltd is vicariously liable for the acts and omissions of the driver in breach of his duty of care to the plaintiff and to group members;
 - (b) repeats paragraphs 7 to 9 above; and
 - (c) otherwise does not admit the allegation in the paragraph.

Freestanding duty owed by Linq

- 11 In response to paragraph 11, Transport for NSW:
- (a) admits that Linq Buslines Pty Ltd owed passengers on the bus 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 passengers harm including personal injury or death, economic loss, and mental harm;
 - (b) admits that Linq Buslines Pty Ltd owed the plaintiff and other group members who were not passengers on the bus a duty to exercise reasonable care in the manner in which it supervised its employees (including the driver) so as to avoid causing the plaintiff and other group members harm including mental harm; and
 - (c) otherwise does not admit the allegation in the paragraph.
- 12 Transport for NSW does not know and cannot admit the allegation in paragraph 12.

Particulars

Transport for NSW does not know what inquiries (if any) were made or what policies and procedures (if any) were in place. Transport for NSW reserves its rights with respect to this allegation, including to advance an equivalent allegation in its cross-claim following disclosure and evidence.

- 13 Transport for NSW does not know and cannot admit the allegation in paragraph 13.

Contribution

- 14 Transport for NSW does not plead to paragraph 14, which does not contain any allegation against it.

C. DJV

Parties

- 15 Transport for NSW admits the allegation in paragraph 15.

- 16 Transport for NSW admits the allegation in paragraph 16.

DJV Subcontract

- 17 In response to paragraph 17, Transport for NSW:

- (a) admits the allegation; and
- (b) says that at the time the contract was entered into, Acciona was known as Abigroup Contractors Pty Limited.

- 18 Transport for NSW admits the allegation in paragraph 18.

- 19 In response to paragraph 19, Transport for NSW:

- (a) in relation to subparagraph (a), says that Annexure B stated that the DJV would be responsible “for the detail engineering design and documentation”, rather than the “detailed engineering design and documentation”;
- (b) in relation to subparagraphs (a) to (c), says that Annexure B referred generally to “interchanges” rather than the specific interchange where the accident occurred;
- (c) in relation to subparagraph (e), says that the Services were expressed in Annexure B to include “the detail planning, coordination and management of the DJV design team”, and that the entities with whom the DJV was to

coordinate included (in addition to those referred to in subparagraph (e)) the “Proof Checker”; and

(d) otherwise admits the allegation in the paragraph.

20 Transport for NSW admits the allegation in paragraph 20.

21 Transport for NSW admits the allegation in paragraph 21.

22 Transport for NSW admits the allegation in paragraph 22.

23 Transport for NSW admits the allegation in paragraph 23.

24 Transport for NSW admits the allegation in paragraph 24.

25 Transport for NSW admits the allegation in paragraph 25.

26 Transport for NSW admits the allegation in paragraph 26.

27 Transport for NSW admits the allegation in paragraph 27.

28 Transport for NSW admits the allegation in paragraph 28.

29 Transport for NSW admits the allegation in paragraph 29.

30 Transport for NSW admits the allegation in paragraph 30.

31 Transport for NSW admits the allegation in paragraph 31.

32 Transport for NSW admits the allegation in paragraph 32.

33 Transport for NSW admits the allegation in paragraph 33.

34 Transport for NSW admits the allegation in paragraph 34.

35 Transport for NSW admits the allegation in paragraph 35.

Design of the interchange

36 Transport for NSW does not plead to paragraph 36, which does not contain any allegation against it.

Claims against the DJV

37 Transport for NSW does not plead to paragraph 37, which does not contain any allegation against it.

38 Transport for NSW does not plead to paragraph 38, which does not contain any allegation against it.

- 39 Transport for NSW does not plead to paragraph 39, which does not contain any allegation against it.
- 40 Transport for NSW does not plead to paragraph 40, which does not contain any allegation against it.
- 41 Transport for NSW does not plead to paragraph 41, which does not contain any allegation against it.
- 42 Transport for NSW does not plead to paragraph 42, which does not contain any allegation against it.
- 43 Transport for NSW does not plead to paragraph 43, which does not contain any allegation against it.
- 44 Transport for NSW does not plead to paragraph 44, which does not contain any allegation against it.
- 45 Transport for NSW admits the allegation in paragraph 45.
- 46 Transport for NSW does not plead to the allegation in paragraph 46, which does not contain allegations against it.
- 47 Transport for NSW does not plead to the allegation in paragraph 47, which does not contain allegations against it.
- 48 Transport for NSW does not plead to the allegation in paragraph 48, which does not contain allegations against it.

D. PROJECT VERIFIER

Introduction

- 49 Transport for NSW admits the allegation in paragraph 49.

Deed of Appointment

- 50 Transport for NSW admits the allegation in paragraph 50.

- 51 In response to paragraph 51, Transport for NSW:

- (a) admits that the Deed of Appointment was to be interpreted such that, unless the context indicated a contrary intention, a right conferred on two or more parties benefitted all of them jointly and each of them severally;

- (b) admits that Acciona and the RTA were parties to the Deed of Appointment, together with Aecom Cost Consulting Pty Limited (**Aecom**); and
- (c) otherwise denies the allegation.

52 In response to paragraph 52, Transport for NSW:

- (a) says that clause 1.1 of the Deed of Appointment defined “Project Documents” as the agreements described in Schedule 1 to the Deed of Appointment;
- (b) admits that the documents described in Schedule 1 were the Design and Construct Project Deed, and its schedules and appendices; and
- (c) says that clause 1.1 of the Deed of Appointment defined “Services” to mean those services listed in Schedule 2 to the Deed of Appointment;
- (d) admits that the Services referred to in Schedule 2 included the functions, obligations, duties and services which the “Project Documents” contemplated would be discharged by Aecom; and
- (e) otherwise denies the allegation in the paragraph.

53 Transport for NSW admits the allegation in paragraph 53.

54 Transport for NSW admits the allegation in paragraph 54.

55 Transport for NSW admits the allegation in paragraph 55.

56 Transport for NSW admits the allegation in paragraph 56.

57 Transport for NSW admits the allegation in paragraph 57.

58 Transport for NSW admits the allegation in paragraph 58.

59 Transport for NSW admits the allegation in paragraph 59.

60 Transport for NSW admits the allegation in paragraph 60.

61 Transport for NSW admits the allegation in paragraph 61.

62 Transport for NSW admits the allegation in paragraph 62.

63 Transport for NSW admits the allegation in paragraph 63.

64 Transport for NSW admits the allegation in paragraph 64.

65 Transport for NSW admits the allegation in paragraph 65.

66 Transport for NSW admits the allegation in paragraph 66.

Claims against the Project Verifier

- 67 Transport for NSW does not plead to paragraph 67, which does not contain any allegation against it.
- 68 Transport for NSW does not plead to paragraph 68, which does not contain any allegation against it.
- 69 Transport for NSW does not plead to paragraph 69, which does not contain any allegation against it.
- 70 Transport for NSW does not plead to paragraph 70, which does not contain any allegation against it.
- 71 Transport for NSW does not plead to paragraph 71, which does not contain any allegation against it.
- 72 Transport for NSW does not plead to paragraph 72, which does not contain any allegation against it.
- 73 Transport for NSW does not plead to paragraph 73, which does not contain any allegation against it.
- 74 Transport for NSW does not plead to paragraph 74, which does not contain any allegation against it.
- 75 Transport for NSW does not plead to paragraph 75, which does not contain any allegation against it.
- 76 Transport for NSW does not plead to paragraph 76, which does not contain any allegation against it.
- 77 Transport for NSW does not plead to paragraph 77, which does not contain any allegation against it.

E. TRANSPORT

- 78 Transport for NSW admits the allegation in paragraph 78.
- 79 Transport for NSW admits the allegation in paragraph 79.

Context

- 80 In response to paragraph 80, Transport for NSW:

- (a) says that its responsibility for the design, construction, management and maintenance of Wine Country Drive and the interchange was subject to any delegation of responsibility; and
- (b) otherwise admits the paragraph.

81 Transport for NSW admits the allegation in paragraph 81.

82 Transport for NSW admits the allegation in paragraph 82.

Contribution

83 In response to paragraph 83, Transport for NSW:

- (a) admits that it issued a reference design for the Hunter Expressway Project;
- (b) admits that it entered into the Design and Construct Project Deed;
- (c) admits that it entered into the Deed of Appointment;
- (d) admits that it proposed the Scope of Works and Technical Criteria in the form in which they were finally agreed;
- (e) admits that the scope of the duty the plaintiff alleges was owed by Acciona is alleged to have been “at least equivalent in scope” or “alternatively, coextensive in part” with the duty allegedly owed by Transport for NSW;

Particulars

Amended Statement of Claim, paragraph 23

- (f) does not know what acts or omissions otherwise form the subject of the allegation; and
- (g) insofar as the balance of the paragraph can be understood, otherwise denies the allegations in the paragraph.

84 In response to paragraph 84, Transport for NSW:

- (a) admits that the scope of the duty the plaintiff alleges was owed by Acciona is alleged to have been “at least equivalent in scope” or “alternatively, coextensive in part” with the duty allegedly owed by Transport for NSW;

Particulars

Amended Statement of Claim, paragraph 23

- (b) says that the balance of the paragraph is vague and embarrassing; and

- (c) insofar as the balance of the paragraph can be understood, otherwise denies the allegations in the paragraph.

85 In response to paragraph 85, Transport for NSW:

- (a) repeats paragraphs 83 and 84 above; and
 (b) insofar as the allegations can be understood, otherwise denies the allegations in the paragraph.

86 In response to paragraph 86, Transport for NSW:

- (a) repeats paragraphs 83 to 85 above; and
 (b) insofar as the allegations can be understood, otherwise denies the allegations in the paragraph.

SIGNATURE OF LEGAL REPRESENTATIVE

I certify under clause 4 of Schedule 2 to the Legal Profession Uniform Law Application Act 2014 that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the defence to the claim for damages in the second cross-claim has reasonable prospects of success.

Signature



Capacity

Solicitor on record

Date of signature

15 January 2026