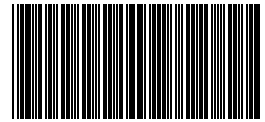




Filed: 16 January 2026 2:32 PM



D0002AM030

### THIRD 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<br>ABN 18804239602                 |
| Second Defendant     | ACCIONA INFRASTRUCTURE PROJECTS AUSTRALIA<br>PTY LTD |
| Number of Defendants | 3                                                    |

#### TITLE OF THIS CROSS-CLAIM

|                            |                                                              |
|----------------------------|--------------------------------------------------------------|
| First Cross Claimant       | AECOM COST CONSULTING PTY LTD<br>ACN 008657289               |
| First Cross Defendant      | BRETT ANDREW BUTTON                                          |
| Second Cross Defendant     | LINQ BUSLINES PTY. LTD.                                      |
| Number of Cross Defendants | 7<br>Refer to Party Details at rear for full list of parties |

#### FILING DETAILS

|                                |                                |
|--------------------------------|--------------------------------|
| Filed for                      | GHD PTY LTD, Cross Defendant 7 |
| Filed in relation to           | Cross-Claim 3                  |
| Legal representative           | Tyler Atkins                   |
| Legal representative reference |                                |
| Telephone                      | 0433935813                     |

#### 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) (260116 GHD Defence to 3XC 3450-2340-1286 v.1.pdf)

[attach.]

Form 7A (version 5)  
UCPR 14.3

## THIRD 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      | <b>Adam James Bray</b>                   |
| First defendant      | <b>Transport for NSW ABN 18804239602</b> |
| Number of defendants | 3                                        |

### TITLE OF THIRD CROSS-CLAIM

|                            |                                                                |
|----------------------------|----------------------------------------------------------------|
| First cross-claimant       | <b>AECOM Cost Consulting Pty Ltd</b><br><b>ACN 008 657 289</b> |
| First cross-defendant      | Brett Andrew Button                                            |
| Number of cross-defendants | 7                                                              |

### FILING DETAILS

|                            |                                                              |
|----------------------------|--------------------------------------------------------------|
| Filed for                  | <b>GHD Pty Ltd ACN 008 488 373</b> , seventh cross-defendant |
| Filed in relation to       | Third Cross-Claim                                            |
| Legal representative       | Tyler Atkins, Batch Mewing                                   |
| Contact name and telephone | Tyler Atkins, + 61 433 935 813                               |
| Contact email              | tyler.atkins@batchmewing.com.au                              |

### PLEADINGS AND PARTICULARS

The seventh cross-defendant, GHD Pty Ltd (**GHD**), pleads and responds to the Third Cross-Claim Statement of Cross-Claim (**Third Cross Claim**) filed on 27 October 2025 as follows, adopting the defined terms therein unless stated otherwise or the context requires.

1 GHD does not plead to paragraph 1 of the Third Cross Claim as it contains no allegations against GHD.

#### **Brett Andrew Button**

2 GHD admits paragraph 2 of the Third Cross-Claim.

3 As to paragraph 3 of the Third Cross-Claim, GHD:

- (a) admits subparagraph (a);
- (b) does not admit subparagraph (b).

4 As to paragraph 4 of the Third Cross-Claim, GHD:

- (a) admits Mr Button was:
  - (i) under the influence of an opioid painkiller, Tramadol;
  - (ii) driving dangerously and negligently, including at excessive and unreasonable speed, causing him to lose control of the bus; and
- (b) otherwise does not know and cannot admit the paragraph.

5 GHD does not plead to paragraphs 5 to 6 of the Third Cross-Claim as they contain no allegations against GHD.

#### **Linq Buslines**

6 GHD admits paragraph 7 of the Third Cross-Claim

7 GHD does not plead to paragraphs 8 to 12 of the Third Cross-Claim as they contain no allegations against GHD.

#### **Transport for NSW**

8 GHD admits paragraph 13 of the Third Cross-Claim.

9 GHD does not plead to paragraphs 14 to 17 of the Third Cross-Claim as they contain no allegations against GHD.

#### **Acciona Infrastructure Projects Australia Pty Ltd**

10 GHD admits paragraph 18 of the Third Cross-Claim.

11 GHD does not plead to paragraphs 19 to 21 of the Third Cross-Claim as they contain no allegations against GHD.

#### **Jacobs Group (Australia) Pty Ltd**

12 GHD admits paragraph 22 of the Third Cross-Claim.

13 GHD does not plead to paragraphs 23 to 28 of the Third Cross-Claim as they contain no allegations against GHD.

#### **SMEC Australia Pty Ltd**

14 GHD admits paragraph 29 of the Third Cross-Claim.

15 GHD does not plead to paragraphs 30 to 35 of the Third Cross-Claim as they contain no allegations against GHD.

**GHD Pty Ltd**

- 16 GHD admits paragraph 36 of the Third Cross-Claim.
- 17 GHD admits paragraph 37 of the Third Cross-Claim.
- 18 As to paragraph 38 of the Third Cross-Claim, GHD:
- (a) says that:
    - (i) by clause 2.1(a) of the Deed of Appointment of Project Verifier, the RTA and Acciona appointed ACC under the Deed of Appointment of Project Verifier to perform the “Services”;
    - (ii) by clause 2.1(b) of the Deed of Appointment of Project Verifier, ACC confirmed its acceptance of the appointment referred to in clause 2.1(a) of the Deed of Appointment of Project Verifier; and
    - (iii) by clause 1.1 of the Deed of Appointment of Project Verifier, the term “Services” meant the services listed in Schedule 2 to the Deed of Appointment of Project Verifier; and
  - (b) otherwise admits paragraph 38 of the Third Cross-Claim.
- 19 As to paragraph 39 of the Third Cross-Claim, GHD:
- (a) repeats and relies upon clause 3.4 of the Deed of Appointment of Project Verifier in full;
  - (b) says that the term “Verification Services” as appears in paragraph 39 of the Third Cross-Claim is not a defined term in any of the Design and Construct Project Deed, Deed of Appointment of Project Verifier or the GHD Subcontract; and
  - (c) otherwise denies paragraph 39 of the Third Cross-Claim.
- 20 As to paragraph 40 of the Third Cross-Claim, GHD:
- (a) admits that it entered into a contract with ACC (then known as Davis Langdon) styled “Independent Contractor Agreement” (**GHD Subcontract**);
  - (b) says that:
    - (i) pursuant to clause 2.2(a) of the GHD Subcontract, GHD warranted that it would provide the “Services” in accordance with the GHD Subcontract;
    - (ii) pursuant to clause 1.1 of the GHD Subcontract, the term “Services” was defined to mean the services set out in the Schedules to the GHD Subcontract;

(iii) pursuant to Schedule 5 of the GHD Subcontract:

- A. the Services under the GHD Subcontract were as defined in Schedule 1 and Schedule 3 of the Deed of Appointment of Project Verifier subject to the following:
  - 1. ACC (not GHD) would undertake and be responsible for the following areas of Design Verification:
    - a. geotechnical works, including verification of geotechnical reports, slope stability, pile and foundation capacities, reinforced soil wall designs, settlement calculations, save insofar as GHD was requested by ACC to provide specific advice on mine voids and road pavements;
    - b. coordination between Design Packages;
    - c. urban design, landscape design and architectural components;
- B. the scope of work items listed in Schedule 1 of the Deed of Appointment of Project Verifier are to be interpreted as relating to GHD's design verification tasks only;
- C. audits of the design packages would be undertaken by GHD within the limitations of time and resources available to the design verification team to assure that the works were in accordance with the Deed of Appointment of Project Verifier, Scope of Works and Technical Criteria and Specifications; GHD did not undertake to ensure that the designs were "fit for purpose";
- D. verification of structural packages did not include independent detailed calculations and modelling by GHD;
- E. with respect to Section 5.2, under "safety considerations encompass", GHD would audit the design packages for compliance with the Deed of Appointment of Project Verifier, the Scope of Works and Technical Criteria, and the Specifications; GHD would not review the adequacy of specific design elements, other than for conformance with the Deed of Appointment of Project Verifier, the Scope of Works and Technical Criteria, and the Specifications;

(c) repeats and relies upon the terms of the GHD Subcontract in full; and

(d) otherwise denies paragraph 40 of the Third Cross-Claim.

21 As to paragraph 41 of the Third-Cross Claim, GHD:

- (a) admits that:
  - (i) by clause 2.1(a), GHD acknowledged that it had received a copy of the Deed of Appointment of Project Verifier and that it had read, was familiar with and understood and appreciated the terms of the Deed of Appointment of Project Verifier to the extent it related to the Services;
  - (ii) by clause 2.1(b), GHD acknowledged that it was obliged to observe the obligations of ACC under the Deed of Appointment of Project Verifier and the Design and Construct Project Deed as relevant to the Services and would perform and discharge its obligations under the GHD Subcontract to enable ACC to perform and discharge its corresponding obligations and exercise its rights as relevant to the Services;
  - (iii) by clause 2.1(c), GHD acknowledged that it would not breach any obligations under the GHD Subcontract which might cause ACC to be in breach of its obligations or to not be capable of exercising its rights under the Deed of Appointment of Project Verifier;
- (b) says that the “Services” referred to in clause 2.1 of the GHD Subcontract are the Services as defined in clause 1.1 of the GHD Subcontract and repeats and relies upon the matters pleaded in paragraph 20 above;
- (c) repeats and relies upon the terms of the GHD Subcontract in full; and
- (d) otherwise denies paragraph 41 of the Third Cross-Claim.

22 As to paragraph 42 of the Third-Cross Claim, GHD:

- (a) admits that:
  - (i) by clause 2.2(a) GHD warranted that it would perform the Services in accordance with the GHD Subcontract;
  - (ii) by clause 2.2(b) GHD warranted that it would perform the Services in compliance with all laws (including ordinances, by-laws and regulations), legislative requirements, authorities and any other relevant standards or codes;
  - (iii) by clause 2.2(c) GHD warranted that it would perform the Services 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 Services within the design and

construction industry generally and the design and construction of major engineering works in particular; and

- (b) says that the “Services” referred to in clause 2.2 of the GHD Subcontract are the Services as defined in clause 1.1 of the GHD Subcontract and repeats and relies upon the matters pleaded in paragraph 20 above;
- (c) repeats and relies upon the terms of the GHD Subcontract in full; and
- (d) denies paragraph 42 of the Third Cross-Claim.

23 As to paragraph 43 of the Third-Cross Claim, GHD:

- (a) says that the “Services” referred to in the GHD Subcontract are the Services as defined in clause 1.1 of the GHD Subcontract and repeats and relies upon the matters pleaded in paragraph 20 above;
- (b) says that, with respect to the services identified in subparagraphs 43(a) to 43(h) of the Third Cross-Claim, GHD’s obligation was to undertake those services in relation to those design packages that were the subject of “the Contractor’s Services” (that is, the “Services” as defined in the GHD Subcontract);
- (c) repeats and relies upon to the terms of the GHD Subcontract in full; and
- (d) denies paragraph 43 of the Third Cross-Claim.

24 As to paragraph 44 of the Third Cross-Claim, GHD:

- (a) says that by clause 6.5 ACC is liable for and indemnifies GHD against any liability, loss, claim, expense or damage which GHD might pay, suffer or incur in respect of any damage to or loss or property or 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 ACC, it employees, agents, subcontractors or Contractors;
- (b) denies paragraph 44 of the Third Cross-Claim.

25 As to paragraph 45 of the Third Cross-Claim, GHD:

- (a) admits that in or about February 2011, GHD prepared a document styled “Hunter Expressway – Kurri Kurri to Branxton Project Design Verification” “Project Management Plan” revision 0; and
- (b) otherwise denies paragraph 45 of the Third Cross-Claim.

26 As to paragraph 46 of the Third Cross-Claim, GHD:

- (a) assumes that the term ‘Design Documentation’ as appears in subparagraph (b) is a reference to that term as defined in the Design and Construct Project Deed;

- (b) says that the “Services” referred to in the GHD Subcontract are the Services as defined in clause 1.1 of the GHD Subcontract and repeats and relies upon the matters pleaded in paragraph 20 above;
- (c) admits that GHD issued Design Verification Reports; and
- (d) otherwise denies paragraph 46 of the Third Cross-Claim.

*Indemnity*

27 As to paragraph 47 of the Third Cross-Claim, GHD:

- (a) repeats and relies upon the matters pleaded in paragraph 24 above;
- (b) denies paragraph 47 of the Third Cross-Claim.

28 As to paragraph 48 of the Third Cross-Claim, GHD:

- (a) says that the paragraph is embarrassing and liable to be struck out because ACC does not identify:
  - (i) the “aspect of the design” that was “verified” by GHD as compliant with the Design and Construct Project Deed including the SWTC (**Design Aspect**);
  - (ii) how the Design Aspect is said not to have been compliant with the Design and Construct Project Deed including the SWTC (**Non-Compliant Design Aspect**);
  - (iii) how, in so verifying the Non-Compliant Design Aspect, GHD (or its employees, agents, subcontractors or contractors) committed a “negligent act” as pleaded in paragraph 48 of the Third Cross-Claim;
- (b) repeats and relies upon the matters pleaded in paragraph 24 above; and
- (c) denies paragraph 48 of the Third Cross-Claim.

29 In further answer to paragraphs 47 to 48 Third Cross-Claim (and in the alternative to the matters pleaded in paragraph 24 above), GHD says that:

- (a) the GHD Subcontract is a contract within the meaning of s. 14(1)(a) of the *Limitation Act 1969* (NSW);
- (b) any claim arising for breach of the GHD Subcontract (including any claim under the indemnity contended in paragraph 44 of the Third Cross-Claim) accrued no later than 7 November 2014;
- (c) the Third Cross-Claim was filed on 27 October 2025, being a date more than six years after 7 November 2014; and

- (d) by reason of the matters pleaded in subparagraphs (a) to (c) above, the claim pleaded in paragraphs 47 and 48 of the Third Cross-Claim is barred pursuant to s 14(1)(a) of the *Limitation Act 1969* (NSW).

#### *Contribution*

30 As to paragraph 49 of the Third Cross-Claim, GHD:

- (a) says that the paragraph is embarrassing and liable to be struck out because ACC does not identify the material facts relied upon by ACC to contend that the duties of care:
  - (i) alleged by the plaintiff in the ASOC as against ACC;
  - (ii) alleged by TfNSW in the First Cross-Claim as against ACC;
  - (iii) alleged by Acciona in the Second Cross-Claim as against ACC,
 are duties “with respect to the verification and certification” of the design and construction of the interchange; and
- (b) denies paragraph 49 of the Third Cross-Claim.

31 As to paragraph 50 of the Third Cross-Claim, GHD:

- (a) says that the paragraph is embarrassing and liable to be struck out because ACC does not identify the material facts relied upon by ACC to contend that the breaches of duty:
  - (i) alleged by the plaintiff in the ASOC as against ACC;
  - (ii) alleged by TfNSW in the First Cross-Claim as against ACC;
  - (iii) alleged by Acciona in the Second Cross-Claim as against ACC,
 include allegations “with respect to the verification and certification” of the design and construction of the interchange; and
- (b) denies paragraph 50 of the Third Cross-Claim.

32 As to paragraph 51 of the Third Cross-Claim, GHD:

- (a) says that the paragraph is embarrassing and liable to be struck out because ACC does not identify:
  - (i) how it is said that GHD owed a duty of care to the plaintiff and group members by reference to:
    - A. sections 5B and 5C; and
    - B. in the case of alleged mental harm, section 32, of the *Civil Liability Act 2002* (NSW);

- (ii) the material facts relied upon to contend that such a duty is “at least equivalent in scope to that owed by ACC” or “alternatively, coextensive in part with the duty owed by ACC” to the plaintiff and group members;
- (b) says further that no such duty could be owed by GHD because:
  - (i) in undertaking the Services (as that term is defined in the GHD Subcontract), GHD acted as an independent contractor to the RTA;
  - (ii) by reason of the matter pleaded in subparagraph (b)(i) above, GHD’s conduct in undertaking the Services (as that term is defined in the GHD Subcontract) was conduct of the RTA, not GHD;
- (c) denies paragraph 51 of the Third Cross-Claim;
- (d) says that, if contrary to what is pleaded in subparagraphs (b) or (c) above, GHD is found to owe the plaintiff or any group members any duty of care, the extent of such a duty is assessed by reference to road users exercising reasonable care for their own safety.

33 As to paragraph 52 of the Third Cross-Claim, GHD:

- (a) says that the paragraph is embarrassing and liable to be struck out because ACC does not identify:
  - (i) how it is said that GHD owed a duty of care to TfNSW by reference to sections 5B and 5C of the *Civil Liability Act 2002* (NSW);
  - (ii) the material facts relied upon to contend that such a duty is “at least equivalent in scope to that owed by ACC” or “alternatively, coextensive in part with the duty owed by ACC” to TfNSW; and
- (b) denies paragraph 52 of the Third Cross-Claim.

34 As to paragraph 53 of the Third Cross-Claim, GHD:

- (a) says that the paragraph is embarrassing and liable to be struck out because ACC does not identify:
  - (i) how it is said that GHD owed a duty of care to Acciona by reference to sections 5B and 5C of the *Civil Liability Act 2002* (NSW);
  - (ii) the material facts relied upon to contend that such a duty is “at least equivalent in scope to that owed by ACC” or “alternatively, coextensive in part with the duty owed by ACC” to Acciona; and
- (b) denies paragraph 53 of the Third Cross-Claim.

- 35 As to paragraph 54 of the Third Cross-Claim, GHD:
- (a) assumes that the paragraph should be read to include the word “are” between the words “Acciona” and “with”;
  - (b) repeats and relies upon the matters pleaded in paragraph 31 above and says that paragraph 54 of the Third Cross-Claim is embarrassing and liable to be struck out; and
  - (c) denies paragraph 54 of the Third Cross-Claim.
- 36 As to paragraph 55 of the Third Cross-Claim, GHD:
- (a) repeats and relies upon the matter pleaded in paragraphs 30 to 35 above;
  - (b) says that the Third Cross-Claim is embarrassing because ACC has not identified, by reference to section 5D of the *Civil Liability Act 2002* (NSW), how it says that any alleged breach of duty on the part of GHD caused loss to any of the plaintiff, group members, TfNSW or Acciona; and
  - (c) denies paragraph 55 of the Third Cross-Claim.
- 37 In further answer to paragraphs 49 to 55 of the Third Cross-Claim, GHD says that by section 5O of the *Civil Liability Act 2002* (NSW), GHD cannot incur a liability in negligence because it acted in a manner that, at the time the Services (as that term is defined in the GHD Subcontract) were performed, was widely accepted in Australia by peer professional opinion as competent professional practice.

#### Direct negligence

- 38 As to paragraph 56 of the Third Cross-Claim, GHD:
- (a) says that:
    - (i) the paragraph is embarrassing and liable to be struck out because ACC has not identified, by reference to section 5B and 5C of the *Civil Liability Act 2002* (NSW), the material facts relied upon by ACC to contend that GHD owed ACC a duty of care;
    - (ii) further that any duty of care owed by GHD to ACC (which is not admitted) would be of no greater scope than the scope of GHD’s obligations under the GHD Subcontract; and
  - (b) denies paragraph 56 of the Third Cross-Claim.
- 39 As to paragraph 57 of the Third Cross-Claim, GHD:
- (a) says that the paragraph is embarrassing and liable to be struck out because ACC has not identified:

- (i) the material facts relied upon to contend that GHD breached the “duty” contended in paragraph 56 of the Third Cross-Claim; and
  - (ii) by reference to section 5D of the *Civil Liability Act 2002* (NSW), how it says that any alleged breach of duty on the part of GHD caused loss to ACC; and
- (b) denies paragraph 57 of the Third Cross-Claim.

40 In further answer to paragraphs 56 and 57 of the Third Cross-Claim, GHD says that:

- (a) by section 5O of the *Civil Liability Act 2002* (NSW), GHD cannot incur a liability in negligence because it acted in a manner that, at the time the Services (as that term is defined in the GHD Subcontract) were performed, was widely accepted in Australia by peer professional opinion as competent professional practice.
- (b) further:
  - (i) in the ASOC, the First Cross-Claim and the Second Cross-Claim, the plaintiff, TfNSW and Acciona allege (respectively) that ACC conducted services that were inadequate to identify the alleged unsafe design and construction of the interchange;
  - (ii) if the allegations referred to in subparagraph (b)(i) are correct (which is not admitted), such loss and damage was caused or contributed to by acts or omissions of ACC; and
  - (iii) any damages that ACC may recover from GHD should be reduced by virtue of its contributory negligence, to such extent as the Court thinks just and equitable having regard to ACC’s share in responsibility for the damage, pursuant to section 9(1) of the *Law Reform (Miscellaneous Provisions) Act 1965* (NSW) and at law.

#### **Limitation under the EPA Act**

41 In further answer to the entirety of ACC’s claims against GHD, GHD says that:

- (a) the design and construction of the Braxton Interchange is building work:
  - (i) within the meaning of section 109ZK(1) of the *Environmental Planning and Assessment Act 1979* (NSW);
  - (ii) alternatively (from and after 1 March 2018), within the meaning of section 6.20(1) of the *Environmental Planning and Assessment Act 1979* (NSW);

- (b) each of the ACC's claims against GHD is:
  - (i) a "building action" within the meaning of section 109ZK(1);
  - (ii) alternatively (from and after 1 March 2018), a civil action for loss or damage arising out of or in connection with defective building work within the meaning of section 6.20(1) of the *Environmental Planning and Assessment Act 1979* (NSW);
- (c) ACC's claims against GHD are claims for economic loss; they are not claims for the recovery of damages for death or personal injury arising out of or concerning defective building work within the meaning of:
  - (i) section 109KL of the *Environmental Planning and Assessment Act 1979* (NSW);
  - (ii) alternatively (from and after 1 March 2018), section 6.21 of the *Environmental Planning and Assessment Act 1979* (NSW);
- (d) with respect to section 109ZK(1) of the *Environmental Planning and Assessment Act 1979* (NSW):
  - (i) the Braxton Interchange was first used on 22 March 2014;
  - (ii) by reason of the matter referred to in subparagraph (d)(i) above, the latest date for bringing a building action in relation to the design and construction of the Braxton Interchange was 22 March 2024;
  - (iii) the Third Cross-Claim was filed on 25 October 2025, being a later than 22 March 2024; and
  - (iv) by reason of the matters referred to in subparagraphs (a) to (d)(iii) above, the claims in the Third Cross-Claim against GHD are barred;
- (e) in the alternative to the matter pleaded in paragraph (d) above and with respect to section 6.20 of the *Environmental Planning and Assessment Act 1979* (NSW) (on and from 1 March 2018):
  - (i) completion of the Braxton Interchange occurred on 7 November 2014 at the latest;
  - (ii) by reason of the matter referred to in subparagraph (e)(i) above, the latest date a civil action for loss or damage arising out of or in connection with defective building work with respect to the Braxton Interchange could be brought was 7 November 2024;
  - (iii) the Third Cross-Claim was filed on 25 October 2025, being a later than 7 November 2024; and

- (iv) by reason of the matters referred to in subparagraphs (a) to (c) and (f)(i) to (f)(iii) above, the claims in the Third Cross-Claim against GHD are barred.

### **Limits to recovery by the plaintiff and group members**

#### *Civil Liability Act 2002 (NSW)*

42 In further answer to the entirety of ACC's claims against GHD, GHD says that:

- (a) by reason of section 30 of the *Civil Liability Act 2002* (NSW), to the extent any claims against GHD concern a claim for damages 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 section 30(5) of the *Civil Liability Act 2002* (NSW);
- (b) by reason of section 31 of the *Civil Liability Act 2002* (NSW), GHD has no liability to pay damages with respect to a claim for pure mental harm resulting from negligence unless the harm consists of a recognised psychiatric illness; and
- (c) by reason of section 33 of the *Civil Liability Act 2002* (NSW), 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.

#### *Motor Accident Injuries Act 2017 (NSW)*

43 In further answer to the entirety of ACC's claims against GHD, GHD says that:

- (a) by reason of the *Motor Accident Injuries Act 2017* (NSW) sections 4.1 and 4.2, Part 4 of the *Motor Accident Injuries Act 2017* (NSW) applies to and in respect of any award of damages to the plaintiff or any group member in respect of the claims pleaded in the ASOC; and
- (b) in the alternative, if Part 4 of the *Motor Accident Injuries Act 2017* (NSW) does not so apply, then Part 2 of the *Civil Liability Act 2002* (NSW) applies.

### No double recovery

- 44 In further answer to the entirety of ACC's claims against GHD, GHD says that by reason of the prohibition against double recovery, any damages payable by GHD are to be reduced to the extent that the plaintiff or any group member has received statutory benefits or damages under the *Motor Accident Injuries Act 2017* (NSW), non-refundable compensation under the *Workers Compensation Act 1987* (NSW), or any other form of compensation.

### Contributory negligence

- 45 In further answer to the entirety of ACC's claims against GHD, GHD says:
- (a) each of the seats on the bus was fitted with an "approved seatbelt" within the meaning of the *Road Rules 2014* (NSW);
  - (b) by reason of *Road Rules 2014* (NSW) rules 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 *Motor Accident Injuries Act 2017* (NSW) sections 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 2002* (NSW), any damages payable in respect of any claims against GHD referable to any such passenger should be reduced by such extent as the Court thinks just and equitable.

### **Limitation under the GHD Subcontract**

- 46 In further answer to the entirety of ACC's claims against GHD, GHD says that by clause 6.7 of the GHD Subcontract if GHD is liable to ACC (which is denied) then GHD's liability to ACC under the GHD Subcontract, from all claims howsoever arising (including negligence and breach of statutory duty) is limited in aggregate to \$20 million.

### **Relief**

- 47 GHD denies that ACC is entitled to the relief claimed against GHD in the Third Cross-Claim.

### **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 these proceedings has reasonable prospects of success.

Signature

A handwritten signature in black ink, appearing to read 'Jattlu', is centered within a light gray rectangular box.

Capacity

Solicitor on record

Date of signature

16 January 2026