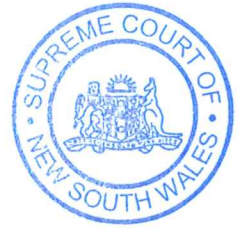


FILED

19 JAN 2026



FIFTH CROSS-CLAIM STATEMENT OF 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	Jacobs Group (Australia) Pty Ltd (ACN 001 024 095)
First Cross-Defendant	Brett Andrew Button
Number of Cross-Defendants	6 Refer to Party Details for the full list of cross-defendants

FILING DETAILS

Filed for	Jacobs Group (Australia) Pty Ltd (ACN 001 024 095) First Cross-Claimant to the Fifth Cross-Claim SMEC Australia Pty Ltd (ACN 065 475 149), Second Cross-Claimant to the Fifth Cross-Claim
Filed in relation to	Fifth Cross-Claim
Legal representatives	Alex McKellar, HFW Australia for the First Cross-Claimant to the Fifth Cross-Claim Matthew Smith, Clyde & Co for the Second Cross-Claimant to the Fifth Cross-Claim
Legal representatives reference	HFW Reference: 92929/11 Clyde & Co Reference: 10762844
Contact name and telephone	Alex McKellar, +61 3 8601 4504 Steven Lurie (02) 9210 4404

Contact email

Alex McKellar: alex.mckellar@hfw.com

Steven Laurie: steven.lurie@clydeco.com

RELIEF CLAIMED BY THE FIRST CROSS-CLAIMANT

Against each cross-defendant:

- 1 Contribution, including equitable contribution, and contribution pursuant to:
 - a. section 5 of the *Law Reform (Miscellaneous Provisions) Act 1946* (NSW); and/or
 - b. section 12 of the *Law Reform (Miscellaneous Provisions) Act 1965* (NSW).
- 2 Interest pursuant to the *Civil Procedure Act 2005* (NSW) s 100(1).
- 3 Costs.

PLEADINGS AND PARTICULARS

Jacobs Group (Australia) Pty Ltd (formerly Sinclair Knight Merz Pty Ltd) (**Jacobs**) and SMEC Australia Pty Ltd (**SMEC**) advance this cross-claim in the event that Jacobs and/or SMEC are liable (which is denied) to Acciona Infrastructure Projects Australia Pty Ltd (**Acciona**) in respect of the matters pleaded in the Second Cross-Claim Statement of Cross-Claim (**Second Cross-Claim**), and/or to Aecom Cost Consulting Pty Ltd (**ACC**) in respect of the matters pleaded in the Third Cross-Claim Statement of Cross-Claim (**Third Cross-Claim**).

In this Cross-Claim, the below terms are defined as follows:

- "**Accident**" means the accident the subject of these proceedings.
- "**Bus**" has the meaning defined in paragraph 2(a) the Plaintiff's Amended Statement of Claim filed 15 July 2025 ("**ASOC**").
- "**Design and Construct Project Deed**" has the meaning defined in paragraph 15 of TfNSW's First Cross-Claim filed 24 April 2025.
- "**Hunter Expressway Project**" means the design and construction of the Kurri Kurri to Branxton section of the Hunter Expressway.
- "**Interchange**" means the interchange known as the "Branxton Interchange" between Wine Country Drive and the Hunter Expressway in the Hunter Valley, NSW.
- "**Main Road**" has the meaning given to it by the *Roads Act 1993* (NSW).
- "**Plaintiff Asserted Breach**" has the meaning defined in paragraph 38(a) of Acciona's Second Cross-Claim filed 17 September 2025.
- "**RTA**" has the meaning defined in paragraph 14 of the Plaintiff's ASOC.

- "Wine Country Drive" means the road that was as at 11 June 2023, a Main Road known as M220 running from Branxton to Cessnock.

BRETT ANDREW BUTTON

- 1 The first cross-defendant, Brett Andrew Button (**Mr Button**), was at all material times the driver of the Bus.
- 2 For the purposes of this cross-claim only, Jacobs and SMEC repeat the allegations which are admitted and otherwise repeat the allegations, without admission in:
 - (a) paragraphs 15 to 41 of the Second Cross-Claim against Jacobs, which contain Acciona's claim against Jacobs and SMEC;
 - (b) paragraphs 2 to 5 of the Second Cross-Claim against Mr Button, which contain Acciona's claim against Mr Button;
 - (c) paragraphs 22 to 27 of the Third Cross-Claim against Jacobs, which contain ACC's claim against Jacobs;
 - (d) paragraphs 29 to 34 of the Third Cross-Claim against SMEC, which contain ACC's claim against SMEC;
 - (e) paragraphs 2 to 5 of the Third Cross-Claim against Mr Button, which contain ACC's claim against Mr Button.
- 3 If and solely to the extent that Jacobs and/or SMEC are liable to Acciona and/or ACC in respect of any damage claimed by the plaintiff and to the group members against Acciona and/or ACC (which is denied), then by reason of the matters pleaded at paragraphs 1 to 2 above:

Statutory contribution

- (a) pursuant to *Law Reform (Miscellaneous Provisions) Act 1946* (NSW) ("**Law Reform 1946 Act**") s 5 and *Law Reform (Miscellaneous Provisions) Act 1965* (NSW) ("**Law Reform 1965 Act**") s 12:
 - (i) Mr Button is a tortfeasor who is, or would if sued have been, liable in respect of the same damage; and, therefore
 - (ii) Jacobs and/or SMEC are entitled to recover from Mr Button contribution that amounts to a complete indemnity, or alternatively such other amount of contribution as may be found by the Court to be just and equitable having regard to the extent of Mr Button's responsibility for the damage,

Equitable contribution

- (b) in the alternative to subparagraph (a) above:

- (i) Jacobs and/or SMEC and Mr Button share a co-ordinate liability to make good that damage; and, therefore
- (ii) Jacobs and/or SMEC are entitled to recover equitable contribution from Mr Button.

LINQ BUSLINES PTY LTD

- 4 Linq Buslines Pty Ltd (ACN 131 153 896), the second cross-defendant (**Linq Buslines**), is:
 - (a) a company within the meaning of the *Corporations Act 2001* (Cth); and
 - (b) capable of being sued in its own name.
- 5 For the purposes of this cross-claim only, Jacobs and SMEC repeat the allegations which are admitted and otherwise repeat the allegations, without admission in:
 - (a) paragraphs 15 to 41 of the Second Cross-Claim against Jacobs and SMEC, which contain Acciona's claim against Jacobs and SMEC;
 - (b) paragraphs 6 to 13 of the Second Cross-Claim against Linq Buslines, which contain Acciona's claim against Linq Buslines;
 - (c) paragraphs 22 to 27 of the Third Cross-Claim against Jacobs, which contain ACC's claim against Jacobs;
 - (d) paragraphs 29 to 34 of the Third Cross-Claim against SMEC, which contain ACC's claim against SMEC;
 - (e) paragraphs 7 to 11 of the Third Cross-Claim against Linq Buslines, which contain ACC's claim against Linq Buslines.
- 6 If and solely to the extent that Jacobs and/or SMEC are liable to Acciona and/or ACC in respect of any damage claimed by the plaintiff and to the group members against Acciona and/or ACC (which is denied), then by reason of the matters pleaded at paragraphs 4 to 5 above:

Statutory contribution

 - (a) pursuant to *Law Reform (Miscellaneous Provisions) Act 1946* (NSW) s 5 and *Law Reform (Miscellaneous Provisions) Act 1965* (NSW) s 12:
 - (i) Linq Buslines is a tortfeasor who would, if sued, have been liable in respect of the same damage; and, therefore
 - (ii) Jacobs and/or SMEC are entitled to recover from Linq Buslines contribution that amounts to a complete indemnity, or alternatively such other amount of contribution as may be found by the Court to be just and

equitable having regard to the extent of Linq Buslines' responsibility for the damage,

Equitable contribution

- (b) in the alternative to subparagraph (a) above:
 - (i) Jacobs and/or SMEC and Linq Buslines share a co-ordinate liability to make good that damage; and, therefore
 - (ii) Jacobs and/or SMEC are entitled to recover equitable contribution from Linq Buslines.

TfNSW

- 7 The third cross-defendant, Transport for New South Wales (ABN 18 804 239 602) (**TfNSW**), is a corporation duly constituted by section 3C(1) of the *Transport Administration Act 1988* (NSW) as amended by the *Transport Administration Amendment (RMS Dissolution) Act 2019* (NSW), and able to be sued.
- 8 TfNSW is responsible for any liabilities incurred by its predecessor, RTA.

Particulars

Transport Legislation Amendment Act 2011 (NSW), s 138(2)

Transport Administration Act 1988 NSW, Sch 7, item 218(2)

- 9 From 29 October 2010, and as at 11 June 2023 (the date of the Accident), TfNSW or its predecessor, RTA, had responsibility for the design, construction, management and maintenance of:
 - a. Wine Country Drive;
 - b. M15, being the road known as the 'Hunter Expressway'; and
 - c. the Interchange.
- 10 TfNSW owed road users of Wine Country Drive, the Hunter Expressway and the Interchange a duty to take reasonable care in the exercise of its statutory powers for the performance of "road work" and "traffic control work" (as those expressions are defined in the *Roads Act 1993* (NSW)) in respect of Wine Country Drive, the Hunter Expressway and the Interchange.
- 11 At the time of the design and construction of Wine Country Drive, the Hunter Expressway and the Interchange, the duty pleaded in paragraph 10 above rested with RTA.
- 12 For the purposes of this cross-claim only, Jacobs and SMEC repeat the allegations which are admitted and otherwise repeat the allegations, without admission in:

- (a) paragraphs 3 to 11 of the ASOC against TfNSW, which contain the plaintiff's claim against TfNSW;
- (b) paragraphs 15 to 41 of the Second Cross-Claim against Jacobs and SMEC, which contain Acciona's claim against Jacobs and SMEC;
- (c) paragraphs 78 to 85 of the Second Cross-Claim against TfNSW, which contain Acciona's claim against TfNSW;
- (d) paragraphs 22 to 27 of the Third Cross-Claim against Jacobs, which contain ACC's claim from Jacobs;
- (e) paragraphs 29 to 34 of the Third Cross-Claim against SMEC, which contain ACC's claim against SMEC;
- (f) paragraphs 13 to 15 of the Third Cross-Claim against TfNSW, which contain ACC's claim against TfNSW.

RTA Duty

13 If Jacobs and/or SMEC owed the duty to the plaintiff and group members pleaded at paragraph 42 of the Second Cross-Claim or paragraph 24 of the Third Cross-Claim against Jacobs (which is denied) and 31 of the Third Cross-Claim against SMEC (which is denied), then, in undertaking the work of:

- (a) issuing a reference design for the Hunter Expressway Project;
- (b) negotiating and entering into the Design and Construct Project Deed;
- (c) negotiating and entering into the Deed of Appointment;
- (d) setting the SWTC and other parameters within which the Hunter Expressway Project (including the Interchange) was to be designed, constructed and verified, (and in the circumstance pleaded in paragraph 11 above),
- (e) specifying elements of, commenting on and approving the design and construction of the Interchange including the elliptical shape of the Interchange; and
- (f) undertaking a post-opening audit of the Interchange,

RTA owed the plaintiff and group members a duty:

- (i) to exercise reasonable care and skill in the performance of that work; and
- (ii) at least equivalent in scope to (or, alternatively, coextensive in part with) that owed by Jacobs and/or SMEC,

(RTA's Duty of Care owed to the Plaintiff/Group Members).

TfNSW duty

14 If Jacobs and/or SMEC owed the duty to the plaintiff and group members pleaded at paragraph 42 of the Second Cross-Claim and 24 of the Third Cross-Claim against Jacobs (which is denied) and 31 of the Third Cross-Claim against SMEC (which is denied), then, by reason of the matters pleaded at paragraphs 9 to 12 above, TfNSW owed the plaintiff and group members a duty:

- (a) to exercise reasonable care and skill in the performance of that work; and
- (b) at least equivalent in scope to (or, alternatively, coextensive in part with) that owed by Jacobs and/or SMEC,

(TfNSW's Duty of Care owed to the Plaintiff/Group Members).

15 If and to the extent the plaintiff establishes any Plaintiff Asserted Breach, then:

- (a) it will constitute a breach by:
 - (i) RTA of RTA's Duty of Care owed to the Plaintiff/Group Members, or
 - (ii) TfNSW of TfNSW's Duty of Care owed to the Plaintiff/Group Members;
 and
- (b) to the extent the plaintiff and group members have suffered harm, such harm will have been caused, within the meaning of CLA s 5D, by one or more such breaches.

16 If Acciona's claims pleaded in the Second Cross-Claim against TfNSW and against Jacobs and/or SMEC are established and both TfNSW and Jacobs and/or SMEC are liable to Acciona (which is denied) then by reason of the matters pleaded at paragraphs 13 to 15 above:

- (a) TfNSW is a tortfeasor liable to Acciona;
- (b) Jacobs and/or SMEC and TfNSW have a coordinate liability;
- (c) if and to the extent that Jacobs and/or SMEC discharge that coordinate liability, in whole or in part, then TfNSW is liable to contribute to Jacobs and/or SMEC an amount that is just and equitable, by reason of:
 - (i) the principles of equitable contribution;
 - (ii) section 5 of the *Law Reform (Miscellaneous Provisions) Act 1946* (NSW);
 - and/or
 - (iii) section 12 of the *Law Reform (Miscellaneous Provisions) Act 1965* (NSW).

As TfNSW is responsible for any liabilities of RTA, recovery of contribution is only sought as against TfNSW. To avoid doubt, however, recovery of contribution is sought as against TfNSW having regard to its responsibility for the damage as well as RTA's responsibility for the damage (for which TfNSW would now be liable).

- 17 If ACC's claims pleaded in the Third Cross-Claim against TfNSW and against Jacobs and/or SMEC are established and both TfNSW and Jacobs and/or SMEC are liable to ACC (which is denied) then by reason of the matters pleaded at paragraphs 13 to 15 above:
- (a) TfNSW is a tortfeasor liable to ACC;
 - (b) Jacobs and/or SMEC and TfNSW have a coordinate liability;
 - (c) if and to the extent that Jacobs and/or SMEC discharge that coordinate liability, in whole or in part, then TfNSW is liable to contribute to Jacobs and/or SMEC an amount that is just and equitable, by reason of:
 - (i) equitable contribution;
 - (ii) section 5 of the *Law Reform (Miscellaneous Provisions) Act 1946* (NSW); and/or
 - (iii) section 12 of the *Law Reform (Miscellaneous Provisions) Act 1965* (NSW).

Particulars

As TfNSW is responsible for any liabilities of RTA, recovery of contribution is only sought as against TfNSW. To avoid doubt, however, recovery of contribution is sought as against TfNSW having regard to its responsibility for the damage as well as RTA's responsibility for the damage (for which TfNSW would now be liable).

ACCIONA INFRASTRUCTURE PROJECTS AUSTRALIA PTY LTD

- 18 The fourth cross-defendant, Acciona, is:
- (a) a company registered under the *Corporations Act 2001* (Cth), and
 - (b) capable of being sued in its own name.
- 19 For the purposes of this cross-claim only, Jacobs and SMEC repeat the allegations which are admitted and otherwise repeat the allegations, without admission in:
- (a) paragraphs 12 to 24 of the ASOC against Acciona, which contain the plaintiff's claim against Acciona;

- (b) paragraphs 22 to 27 of the Third Cross-Claim against Jacobs, which contain ACC's claim against Jacobs;
 - (c) paragraphs 29 to 34 of the Third Cross-Claim against SMEC, which contain ACC's claim against SMEC;
 - (d) paragraphs 18 to 19 of the Third Cross-Claim against Acciona, which contain ACC's claim against Acciona.
- 20 If ACC's claims pleaded in the Third Cross-Claim against TfNSW and against Jacobs are established and both Acciona and Jacobs and/or SMEC are liable to ACC (which is denied) then by reason of the matters pleaded at paragraphs 18 and 19 above;
- (a) Acciona is a tortfeasor liable to ACC;
 - (b) Jacobs and/or SMEC and Acciona have a coordinate liability;
 - (c) if and to the extent that Jacobs and/or SMEC discharge that coordinate liability, in whole or in part, then Acciona is liable to contribute to Jacobs and/or SMEC an amount that is just and equitable, by reason of:
 - (iv) equitable contribution;
 - (v) section 5 of the *Law Reform (Miscellaneous Provisions) Act 1946* (NSW); and/or
 - (vi) section 12 of the *Law Reform (Miscellaneous Provisions) Act 1965* (NSW).

AECOM COST CONSULTING PTY LTD

- 21 AECOM Costs Consulting Pty Limited (ACN 008 657 289) (formerly known as Davis Langdon Australia Pty Ltd (ACN 008 657 289)) (**ACC**), the fifth cross-defendant, is a company within the meaning of the *Corporations Act 2001* (Cth) and able to be sued.
- 22 ACC, was appointed as Project Verifier pursuant to a Deed of Appointment of Project Verifier (**Deed of Appointment**) entered into on or about 29 October 2010 between, inter alia, Acciona, RTA, and ACC.

Particulars

Deed of Appointment of Project Verifier dated 29 October 2010.

- 23 Clause 1.1 of the Deed of Appointment defined:
- (a) "**Design Phase Services**" as all Services relating to the verification of the design of the Project Works, the Temporary Works and the performance by the Contractor of its design obligations under the Design and Construct Project

Deed, including those specified in clause 12 of the Design and Construct Project Deed;

- (b) **"Other Parties"** as RTA and Acciona;
- (c) **"Project"** as the design and construction of the Kurri Kurri to Branxton section of the Hunter Expressway as set out in the Design and Construct Project Deed;
- (d) **"Project Documents"** as the Design and Construct Project Deed, and its schedules and exhibits (and appendices);
- (e) **"Project Works"** as defined under the Design and Construct Project Deed being the physical works which Acciona was obliged to design, construct, complete and hand over under the Design and Construct Project Deed including the Works, Service Works, Property Works and Local Road Works, but excluding Temporary Works and Landscaping Maintenance;
- (f) **"Services"** as those services listed in Schedule 2 to the Deed of Appointment, including the functions, obligations, duties and services that the Project Documents contemplated would be discharged by the Project Verifier (**Project Verifier Services**);
- (g) **"Verification and Monitoring Plan"** as the plan ACC was required to prepare in accordance with clause 3.6 of the Deed of Appointment, and in respect of which RTA has not issued a notice under clause 3.6(b)(ii), as that plan was updated from time to time in accordance with clause 3.7 of the Deed of Appointment.

24 The Project Verifier Services ACC was obliged to provide under the Deed of Appointment included:

- (a) independently verifying, in accordance with the Deed of Appointment, that the Project Works and Temporary Works complied with the requirements of the Design and Construct Project Deed;
- (b) making determinations on matters that the Design and Construct Project Deed expressly required be determined by the Project Verifier;
- (c) receiving all information and documents, attending all design meetings, obtaining access to such premises as may be necessary or reasonably required for the performance of the obligations of the Project Verifier under this Deed;
- (d) executing and providing certificates in the form of:
 - (i) Schedule 14 every 3 months from the date of the Project Deed until the end of the Landscaping Maintenance Period;

- (ii) Schedule 16 as a condition precedent to Construction Completion;
 - (iii) Schedule 17 on request in connection with the rectification of particular Defects nominated by RTA's Representative; and
 - (iv) Schedule 18 upon the expiry of the last Defects Correction Period;
- (e) observing, monitoring, auditing and testing all aspects of quality in Acciona's Work and the durability of the Project Works to verify compliance with the requirements of the Design and Construct Project Deed;
- (f) reviewing and assessing the quality of Acciona's Work, and the durability of the Project Works to verify the Contractor's compliance with the requirements of the Design and Construct Project Deed;
- (g) reviewing, commenting on and monitoring Acciona's design performance in accordance with clause 12.2 of the Design and Construct Project Deed;
- (h) verifying the final versions of Design Documentation (and any amended final versions of Design Documentation):
- (i) comply with the Design and Construct Project Deed including the SWTC (and in particular the durability and design life requirements); and
 - (ii) are documented to enable construction in compliance with the Design and Construct Project Deed (including to the extent applicable in respect of the correction of Defects), by providing design verification in the form of Schedule 15 to the Project Deed attaching a register of drawings the subject of the verification;
- (i) executing and providing a certificate to RTA's Representative in the form of Schedule 14 to the Project Deed as a condition precedent to RTA's Representative issuing a notice to the Contractor under clause 14.5(b)(i) of the Project Deed.

Particulars

Clause 2.1(a) of the Deed of Appointment.

Schedule 2 to the Deed of Appointment.

25 ACC was otherwise obliged to, among other things:

- (a) discharge the role, functions, obligations, duties and services of the Project Verifier under the Design and Construct Project Deed, including those identified in the STWC; and
- (b) become familiar with the role, functions, obligations, duties and services (express or implied) under the Design and Construct Project Deed of the "Project

Verifier" and review information made available to ACC by Acciona and RTA in order to become fully acquainted with the Project.

Particulars

Clause 2.1(a) of the Deed of Appointment.

Schedule 2 to the Deed of Appointment.

26 ACC acknowledged to Acciona and RTA that:

- (a) it had received a copy of the Project Documents and had read, and was familiar with, the terms of those documents to the extent they related to the Project Verifier Services; and
- (b) its obligations extended to and included the obligations, functions, duties and services of the "Project Verifier" under the Project Documents.

Particulars

Clause 3.1 of the Deed of Appointment.

27 ACC acknowledged to Acciona and RTA that they:

- (a) were relying upon ACC's knowledge, skill, expertise and experience in the performance of its obligations under the Deed of Appointment; and
- (b) may suffer loss if ACC did not perform its obligations in accordance with the requirements of the Deed of Appointment.

Particulars

Clause 3.2(a) of the Deed of Appointment.

28 ACC warranted to Acciona and RTA that, in performing the Project Verifier Services, it would comply with all Law (as defined in the Design and Construct Project Deed), act honestly, diligently, reasonably and 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 Project Verifier Services within the design and construction industry generally and the design and construction of major engineering works in particular.

Particulars

Clause 3.2(b) of the Deed of Appointment.

29 ACC acknowledged to Acciona and RTA that they were entitled to and would rely on any certificate or other document signed or given by it under or pursuant to Deed of Appointment or the Project Documents.

Particulars

Clause 3.2(d) of the Deed of Appointment.

- 30 ACC warranted to Acciona and RTA that it would carry out and perform the Project Verifier Services in accordance with the Deed of Appointment.

Particulars

Clause 3.2(e)(i) of the Deed of Appointment.

- 31 It was an express term of the Deed of Appointment that ACC was required to provide personnel with a sufficient degree of knowledge, skill, expertise and experience to perform its obligations under the Deed of Appointment.

Particulars

Clause 3.3(a) of the Deed of Appointment.

- 32 It was an express term of the Deed of Appointment that ACC:
- (a) was required to implement a quality system in accordance with ISO9000 and 1509001, and otherwise in a form reasonably acceptable to Acciona and RTA to ensure compliance of the Project Verifier Services with the requirements of the Deed of Appointment; and
 - (b) was not relieved of any requirement to perform any obligation under the Deed of Appointment as a result of compliance with the quality assurance requirements of the Deed of Appointment, or any acts or omissions of Acciona or RTA with respect to the quality assurance requirements of the Deed of Appointment.

Particulars

Clause 3.5 of the Deed of Appointment.

- 33 It was an express term of the Deed of Appointment that ACC submit a Verification and Monitoring Plan which had to address the matters identified in Part 2 of Schedule 4 of the Deed of Appointment.

Particulars

Clause 3.6(a), Part 2 of Schedule 4 to the Deed of Appointment.

- 34 It was an express term of the Deed of Appointment that the Verification and Monitoring Plan had to, as a minimum, address and detail ACC's:
- (a) comprehensive plans for continual observation, monitoring, auditing, reviewing, assessment and testing of Acciona's compliance with design and construction obligations, including methodology for certification of Design Documentation;

- (b) strategies, processes, methodologies and procedures for:
 - (i) audit, surveillance and monitoring of Acciona's design and construction activities, including the processes used for determining the levels and scope of surveillance of the Contractor's design and construction activities, including in relation to occupational health and safety;
 - (ii) ensuring that Acciona has addressed all issues of review, comment and consultation with RTA in relation to Design Documentation and construction,
- (c) strategies, systems, procedures, processes, methodologies and reporting protocols to be applied to achieve and satisfy the verification of Acciona's processes to address safety in design issues.

Particulars

(h)(A), (i)(C) and (E), (j)(F) of Schedule 6 to the Deed of Appointment.

35 ACC warranted to Acciona and RTA that in performing the Project Verifier Services, the Project Verifier would act:

- (a) independently of Acciona and RTA;
- (b) honestly, diligently and reasonably; and
- (c) with the degree of professional, knowledge, skill, expertise, experience and care which would be reasonably expected of an expert professional providing services similar to the Project Verifier Services within the construction industry generally and the design and construction of major engineering works in particular.

Particulars

Clause 4.1(a), (b), (c) of the Deed of Appointment.

36 It was an express term of the Deed of Appointment that ACC must contract with GHD Pty Ltd (ACN 008 488 373) in respect of the Design Verification aspect of the Project Verifier Services.

Particulars

Clause 3.4(c) of the Deed of Appointment.

37 It was an express term of the Deed of Appointment that ACC:

- (a) remained responsible for the performance of the Project Verifier Services in accordance with the Deed of Appointment, notwithstanding any subcontracting out of the performance of the Project Verifier Services; and

- (b) was liable for the acts and omissions of any subcontractor as if they were acts and omissions of ACC.

Particulars

Clause 3.4(b) of the Deed of Appointment.

- 38 On or about 7 November 2014, ACC issued RTA with a certificate in the form of Schedule 16 to the Design and Construct Project Deed (**Construction Completion Certificate**) pursuant to which ACC certified that, except in respect of the "RS Walls Non-Conformances" (as defined in the Construction Completion Certificate):
- (a) Acciona had completed construction of the Hunter Expressway Project, including the Interchange, in accordance with the "Design Documentation" (as defined in the Design and Construct Project Deed) that Acciona was entitled to use for construction purposes under clause 12.2 of the Design and Construct Project Deed;
 - (b) the design used by Acciona for construction purposes was in accordance with the requirements of Design and Construct Project Deed including the SWTC;
 - (c) the construction complied with the requirements of the Design and Construct Project Deed including the SWTC; and
 - (d) each of the following designs was in accordance with the requirements of the Design and Construct Project Deed including the SWTC:
 - (i) structural design;
 - (ii) pavement design;
 - (iii) geometric road design;
 - (iv) environmental works design;
 - (v) urban and landscape design;
 - (vi) geotechnical design;
 - (vii) services design;
 - (viii) stormwater and drainage design (both permanent and temporary);
 - (ix) safety design;
 - (x) durability design;
 - (xi) operation and maintenance design;
 - (xii) signage, furniture and roadside furniture design; and
 - (xiii) all other elements of the "Project Works" (as defined in the Design and Construct Project Deed) carried out by Acciona.

39 If Jacobs and/or SMEC owed Acciona the duty pleaded in Acciona's Second Cross-Claim at paragraph 40 (or at all), then, by undertaking project verification work under the Deed of Appointment of Project Verifier pleaded above, ACC owed Acciona a duty:

- (a) to exercise reasonable care and skill in the performance of that work; and
- (b) at least equivalent in scope to (or, alternatively, coextensive in part with) that owed by Jacobs, and/or SMEC, (**ACC's Duty of Care owed to Acciona**).

40 If and solely to the extent Acciona's claims succeed on the basis of a breach that relates to an aspect of the design of the Hunter Expressway Project that was certified by ACC, then:

- (a) it will constitute a breach by ACC of ACC's Duty of Care owed to Acciona; and
- (b) to the extent Acciona has suffered harm, such harm will have been caused, within the meaning of CLA s 5D, by that breach.

41 If and solely to the extent that Jacobs and/or SMEC are liable to Acciona in respect of any damage (which is denied), then by reason of the matters pleaded at paragraphs 21 to 40 above:

Statutory contribution

- (a) pursuant to *Law Reform (Miscellaneous Provisions) Act 1946* (NSW) s 5 and *Law Reform (Miscellaneous Provisions) Act 1965* (NSW) s 12:
 - (i) ACC is a tortfeasor who would, if sued, have been liable in respect of the same damage; and, therefore
 - (ii) Jacobs and/or SMEC are entitled to recover from ACC contribution amounting to a complete indemnity, or alternatively such other amount of contribution as may be found by the Court to be just and equitable having regard to the extent of ACC's responsibility for the damage,

Equitable contribution

- (b) in the alternative to subparagraph (a) above:
 - (i) Jacobs and/or SMEC and ACC share a co-ordinate liability to make good that damage; and, therefore
 - (ii) Jacobs and/or SMEC are entitled to recover equitable contribution from ACC.

GHD

42 GHD Pty Ltd (ACN 008 488 373) (**GHD**), the sixth cross-defendant, is a company within the meaning of the *Corporations Act 2001* (Cth) and able to be sued.

- 43 For the purposes of this cross-claim only, Jacobs and SMEC repeat the allegations which are admitted and otherwise repeat the allegations, without admission in:
- (a) paragraphs 15 to 41 of the Second Cross-Claim against Jacobs and SMEC, which contain Acciona's claim against Jacobs and SMEC;
 - (b) paragraphs 22 to 27 of the Third Cross-Claim against Jacobs, which contain ACC's claim against Jacobs;
 - (c) paragraphs 29 to 34 of the Third Cross-Claim against SMEC, which contain ACC's claim against SMEC;
 - (d) paragraphs 37 to 46, 49 to 54 and 56 to 57(a) of the Third Cross-Claim against GHD, which contain ACC's claim against GHD.
- 44 If Jacobs and/or SMEC owed Acciona the duty pleaded in Acciona's Second Cross-Claim at paragraph 40 (or at all), then, by undertaking design verification work of the Interchange under the GHD Subcontract (as defined in paragraph 40 of the Third Cross-Claim), GHD owed Acciona a duty:
- (a) to exercise reasonable care and skill in the performance of that work; and
 - (b) at least equivalent in scope to (or, alternatively, coextensive in part with) that owed by Jacobs, **(GHD's Duty of Care owed to Acciona)**.
- 45 If Jacobs owed ACC the duty pleaded in ACC's Third Cross-Claim against Jacobs at paragraph 27 (or at all) and paragraph 31 of the Third Cross-Claim against SMEC (which is denied), then, by undertaking design verification work of the Interchange under the GHD Subcontract (as defined in paragraph 40 of the Third Cross-Claim), GHD owed ACC a duty:
- (a) to exercise reasonable care and skill in the performance of that work; and
 - (b) at least equivalent in scope to (or, alternatively, coextensive in part with) that owed by Jacobs and/or SMEC, **(GHD's Duty of Care owed to ACC)**.
- 46 If any of the breaches of duty alleged by Acciona and/or ACC succeed on the basis of a breach that relates to an aspect of the design of the Hunter Expressway Project that was verified and/or certified by GHD, then:
- (a) it will constitute a breach by GHD of GHD's Duty of Care owed to Acciona and/or GHD's Duty of Care owed to ACC; and
 - (b) to the extent Acciona and/or ACC have suffered harm, such harm will have been caused, within the meaning of CLA s 5D, by that breach.

- 47 If and solely to the extent that Jacobs and/or SMEC are liable to Acciona and/or ACC in respect of any damage (which is denied), then by reason of the matters pleaded at paragraphs 44 to 46 above:

Statutory contribution

- (a) pursuant to *Law Reform (Miscellaneous Provisions) Act 1946* (NSW) s 5 and *Law Reform (Miscellaneous Provisions) Act 1965* (NSW) s 12:

- (i) GHD is a tortfeasor who would, if sued, have been liable in respect of the same damage; and, therefore
- (ii) Jacobs and/or SMEC are entitled to recover from GHD contribution amounting to a complete indemnity, or alternatively such other amount of contribution as may be found by the Court to be just and equitable having regard to the extent of GHD's responsibility for the damage,

Equitable contribution

- (b) in the alternative to subparagraph (a) above:
- (iii) Jacobs and/or SMEC and GHD share a co-ordinate liability to make good that damage; and, therefore
 - (iv) Jacobs and/or SMEC are entitled to recover equitable contribution from GHD.

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 claim for damages in this statement of cross-claim has reasonable prospects of success.

I have advised the cross-claimant that court fees may be payable during these proceedings. These fees may include a hearing allocation fee.

Signature

Capacity

Date of signature

Signature

Capacity

Date of signature


Solicitor on record for the First Cross-Claimant to the
Fifth Cross-Claim

16/1/2016


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

16/1/2016

NOTICE TO CROSS-DEFENDANTS

If you do not file a defence you will be bound by any judgment or order in the proceedings so far as it is relevant to this cross-claim.

HOW TO RESPOND

Please read this statement of cross-claim very carefully. If you have any trouble understanding it or require assistance on how to respond to the cross-claim you should get legal advice as soon as possible.

You can get further information about what you need to do to respond to the claim from:

- A legal practitioner.
- LawAccess NSW on 1300 888 529 or at www.lawaccess.nsw.gov.au.
- The court registry for limited procedural information.

You can respond in one of the following ways:

- 1 **If you intend to dispute the cross-claim or part of the cross-claim**, by filing a defence and/or making a cross-claim.
- 2 **If money is claimed, and you believe you owe the money claimed**, by:
 - Paying the cross-claimant all of the money and interest claimed.
 - Filing an acknowledgement of the claim.
 - Applying to the court for further time to pay the claim.
- 3 **If money is claimed, and you believe you owe part of the money claimed**, by:
 - Paying the cross-claimant that part of the money that is claimed.
 - Filing a defence in relation to the part that you do not believe is owed.

Court forms are available on the UCPR website at <http://www.ucprforms.nsw.gov.au/> or at any NSW court registry.

REGISTRY ADDRESS

Street address	Supreme Court of NSW, Level 5, Law Courts Building, Queens Square, 184 Phillip Street, Sydney NSW 2000
Postal address	Supreme Court of NSW, GPO Box 3, Sydney NSW 2001
Telephone	1300 679 272

PARTY DETAILS

A list of parties must be filed and served with this statement of cross-claim.

PARTIES TO THIS CROSS-CLAIM (FIFTH CROSS-CLAIM)**Cross-Claimants**

Jacobs Group (Australia) Pty Ltd

ACN 001 024 095

First Cross-Claimant

SMEC AUSTRALIA PTY LIMITED

ACN 065 475 149

Second Cross-Claimant

Cross-Defendants

BRETT ANDREW BUTTON

First Cross-Defendant

LINQ BUSLINES PTY LTD

ACN 131 153 896

Second Cross-Defendant

TRANSPORT FOR NEW SOUTH WALES

ABN 18 804 239 602

Third Cross-Defendant

ACCIONA INFRASTRUCTURE PROJECTS

AUSTRALIA PTY LTD

ACN 000 201 516

Fourth Cross-Defendant

AECOM COST CONSULTING PTY LIMITED

ACN 008 657 289

Fifth Cross-Defendant

GHD PTY LTD

ACN 008 488 373

Sixth Cross-Defendant