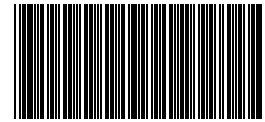




Filed: 12 February 2026 9:24 AM



D0002B6MOV

Form 8 (version 3)
Rule 9.1

**FIRST CROSS-CLAIM
AMENDED STATEMENT OF 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 (prior to amendment)

First Cross-claimant	TRANSPORT FOR NSW
First Cross-defendant	Brett Andrew Button (MIN: 708188)
Second Cross-defendant	LINQ BUSLINES PTY. LTD.
Number of cross-defendants	4

FILING DETAILS

Filed for	TRANSPORT FOR NSW, Cross Claimant 1
Filed in relation to	Cross-claim 1
Legal representative	Brian Moroney
Legal representative reference	
Telephone	9232 2255
Your reference	BGM:500392

ATTACHMENT DETAILS

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Amended Statement of Cross Claim (e-Services), along with any other documents listed below, were filed by the Court.

Amended Statement of Cross Claim (Bray - Amended First Cross Claim.pdf)

[attach.]

Form 9 (version 6)
UCPR 9.1

FIRST CROSS-CLAIM
AMENDED STATEMENT OF CROSS-CLAIM

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Common Law
List	General
Registry	Sydney
Case number	2024/338021

TITLE OF PROCEEDINGS

Plaintiff	Adam James Bray
Defendant	Transport for New South Wales ABN 18 804 239 602

TITLE OF THIS CROSS-CLAIM

Cross-claimant	Transport for New South Wales ABN 18 804 239 602
First cross-defendant	Brett Andrew Button
Second cross-defendant	Linq Buslines Pty Ltd ACN 131 153 896
Third cross-defendant	Acciona Infrastructure Projects Australia Pty Ltd ACN 000 201 516
Fourth cross-defendant	Aecom Cost Consulting Pty Ltd ACN 008 657 289
<u>Fifth cross-defendant</u>	<u>Jacobs Group (Australia) Pty Ltd ACN 001 024 095</u>
<u>Sixth cross-defendant</u>	<u>SMEC Australia Pty Limited ACN 065 475 149</u>
<u>Seventh cross-defendant</u>	<u>GHD Pty Ltd ACN 008 488 373</u>

FILING DETAILS

Filed for	Transport for New South Wales, Defendant / Cross-claimant
Filed in relation to	First 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

RELIEF CLAIMED

- 1 Damages.
- 2 Interest pursuant to s 100(1) of the *Civil Procedure Act 2005* (NSW).
- 3 Equitable contribution.
- 4 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).
- 5 Costs.

PLEADINGS AND PARTICULARS

- 1 Transport for NSW advances this cross-claim in the event (which is denied) that Transport for NSW is liable to the plaintiff or any group members for loss as pleaded in the amended statement of claim.

Brett Andrew Button

- 2 The first cross-defendant, Brett Andrew Button, was at all material times the driver of the bus.
- 3 As the driver of the bus, Mr Button owed:
 - (a) to each passenger of the bus (including any group members who were passengers) a duty to take reasonable care to avoid harm to them from the manner in which he drove the bus; and
 - (b) to the plaintiff and other group members who were not passengers a duty to take reasonable care not to cause mental harm to them from the manner in which he drove the bus.
- 4 At the time of the crash, Mr Button was driving in a manner dangerous to other persons, in that he:
 - (a) was under the influence of Tramadol to the degree that there was impairment of his driving ability, having consumed Tramadol in a quantity exceeding the maximum recommended by medical professionals, and knowing that consuming substantial amounts of Tramadol had the capacity to affect his ability to drive;
 - (b) engaged in risk-taking behaviour; and
 - (c) drove too quickly to safely negotiate the roundabout.

Particulars

Statement of Agreed Facts dated 3 May 2024, filed in the District Court of New South Wales, [9]

- 5 In doing so, Mr Button breached his duty of care to the plaintiff and to each group member.
- 6 By reason of the matters pleaded in paragraphs 3-5 above, if Transport for NSW is liable to the plaintiff or any group members for loss, then:
 - (a) Mr Button is a tortfeasor who would, if sued, be liable to the plaintiff and each group member for the same damage (alternatively, for a portion of the same damage);
 - ~~(b) Transport for NSW and Mr Button have a coordinate liability;~~
 - (c) if and to the extent that Transport for NSW discharges that ~~coordinate~~ liability to the plaintiff and group members in whole or in part, then Mr Button is liable to contribute to Transport for NSW 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).
- 6A By reason of the matters pleaded in paragraphs 3-5 above, if Transport for NSW is liable to the plaintiff or any group members for loss, then:
 - (a) Transport for NSW and Mr Button have a coordinate liability; and
 - (b) If and to the extent that Transport for NSW discharges that liability to the plaintiff and group members in whole or in part, then Mr Button is liable to make equitable contribution to Transport for NSW.

Linq Buslines

- 7 The second cross-defendant, Linq Buslines Pty Ltd ('**Linq Buslines**'), is:

- (a) a company registered under the **Corporations Act 2001** (Cth); and
- (b) capable of being sued in its own name.

- 8 Linq Buslines was at all material times the employer of Mr Button.
- 9 At the time of the incident the subject of these proceedings, Mr Button was driving a bus provided by Linq Buslines, as part of Linq Buslines' business.
- 10 The acts and omissions of Mr Button pleaded in paragraph 4 above occurred in the course of his duties as an employee bus driver of Linq Buslines.
- 11 In the premises of paragraphs 8-10 above, Linq Buslines is vicariously liable for the acts and omissions of Mr Button in breach of his duty of care to the plaintiff and to group members.
- 12 By reason of the matters pleaded in paragraphs 2 - 11 above, if Transport for NSW is liable to the plaintiff or any group members for loss, then:
 - (a) Linq Buslines is a tortfeasor who would, if sued, be liable to the plaintiff and each group member for the same damage (alternatively, for a portion of the same damage);
 - ~~(b) Transport for NSW and Linq Buslines have a coordinate liability;~~
 - (c) if and to the extent that Transport for NSW discharges that ~~coordinate~~ liability to the plaintiff and group members in whole or in part, then Linq Buslines is liable to contribute to Transport for NSW 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).

12A. By reason of the matters pleaded in paragraphs 2 - 11 above, if Transport for NSW is liable to the plaintiff or any group members for loss, then:

- (a) Transport for NSW and Linq Buslines have a coordinate liability; and

- (b) If and to the extent that Transport for NSW discharges that liability to the plaintiff and group members in whole or in part, then Ling Buslines is liable to make equitable contribution to Transport for NSW.

Acciona Infrastructure Projects Australia Pty Ltd

- 13 The third cross-defendant, Acciona Infrastructure Projects Pty Ltd ('**Acciona**'), is:
- (a) a company registered under the *Corporations Act*; and
 - (b) capable of being sued in its own name.
- 14 Acciona was known:
- (a) from on or around 2 February 2016 to on or around 14 September 2020 – as Lendlease Engineering Pty Limited;
 - (b) from on or around 1 August 2013 to 1 February 2016 – as Lend Lease Engineering Pty Limited;
 - (c) from on or around 16 December 1991 to 31 July 2013 – as Abigroup Contractors Pty Ltd (**Abigroup**).
- 15 On or around 29 October 2010, the Roads and Traffic Authority (**RTA**) and Acciona (then known as Abigroup) entered into a deed referred to as the Design and Construct Project Deed.
- 16 The Design and Construct Project Deed includes the following defined terms, among others:
- (a) "Contractor's Work", which means all things and tasks which the Contractor is, or may be, required to carry out or do under the deed to comply with its obligations under the deed to design and construct the Project Works and Temporary Works (as defined) and to perform the Landscaping Maintenance;
 - (b) "Design Documentation", which means all:
 - (i) design documentation (including design standards, design reports, durability reports, specifications, models, samples, calculations, drawings, shop drawings, digital records and all other relevant data) in computer readable and written forms, or stored by any other means, which are required for the performance of the Contractor's Work, or which the Contractor or any other person creates in performing the Contractor's Work (including the design of Temporary Works); and

- (ii) computer software (including both source code and object code versions) where the computer software has been specifically created or specifically modified for the purposes of the Contractor's Work;
- (c) "Landscaping Maintenance", which means the services described in the section of the Scope of Works and technical criteria identified in item 29(bb) of Schedule 1;
- (d) "Project Works", which means the physical works the Contractor must design, construct, complete and hand over under the deed including the Works, Service Works (as defined), Property Works and Local Road Works (as defined), but excluding Temporary Works (as defined) and Landscaping Maintenance;
- (e) "Site", which means the land and airspace described as the Site in the Appendix to the Scope of Works and Technical Criteria identified in Item 29(II) of Schedule 1;
- (f) "Works", which means the physical works, Services (as defined), materials and equipment within the Site which the Contractor must design, construct, complete and hand over to RTA in accordance with the deed, excluding the Local Road Works (as defined), the Property Works and the Service Works.

Particulars

Design and Construct Project Deed, clause 23.2

- 17 Under the Design and Construct Project Deed, Acciona:
- (a) agreed to investigate, design and construct the Project Works as defined under the deed;
 - (b) warranted that the investigation, design and construction of the Project Works was fit for its intended purpose;
 - (c) agreed to perform the Landscaping Maintenance in accordance with the deed;
 - (d) agreed to regularly and diligently progress the Contractor's Work in accordance with the deed;
 - (e) subject to the express provisions of the deed, accepted responsibility for and the risk of all costs, damages, expenses, losses, liabilities or delays which it

incurred or suffered arising out of or in any way in connection with the performance of its obligations under the deed.

Particulars

Design and Construct Project Deed, clauses 1.1 and 1.2

- 18 The “Project Works” under the Design and Construct Project Deed included the interchange.

Particulars

The interchange comprised “Works” within the meaning of clause 23.1 of the Design and Construct Project Deed

- 19 Under the Design and Construct Project Deed, Acciona:
- (a) was obliged to prepare, develop and complete all Design Documentation in accordance with the deed; and
 - (b) acknowledged that the RTA did not have any design obligations in respect of the Project Works or the Design Documentation.

Particulars

Design and Construct Project Deed, clause 12.2

- 20 Under the Design and Construct Project Deed, Acciona warranted that:
- (a) the Design Documentation would:
 - (i) satisfy the requirements of the Scope of Works and Technical Criteria and the other requirements of the deed;
 - (ii) be fit for its intended purpose; and
 - (iii) be completed in accordance with the requirements of the deed;
 - (b) construction in accordance with the Design Documentation would satisfy the requirements of the Scope of Works and Technical Criteria and the other requirements of the deed;
 - (c) the Project Works would:

- (i) be completed in accordance with, and satisfy the requirements of, the deed; and
- (ii) upon Construction Completion (as defined), be fit for their intended purposes;
- (d) the Landscaping Maintenance would be completed in accordance with, and satisfy the requirements of, the deed; and
- (e) Acciona would bear full liability and responsibility for the design and construction of the Project Works.

Particulars

Design and Construct Project Deed, clause 12.1

- 21 Acciona, directly and/or by its subcontractors, carried out the design and construction of the interchange.

Contribution

- 22 The duty of care alleged by the plaintiff as against Transport for NSW is a duty with respect to the design and construction of the interchange.

Particulars

Amended Statement of claim, paragraphs 5 and 6

- 23 The breaches of duty alleged by the plaintiff are allegations with respect to the design and construction of the interchange, being work that was delegated to Acciona.

Particulars

Amended Statement of claim, paragraph 11, particulars (a)-(n)

- 24 If Transport for NSW owed the plaintiff and group members the duty pleaded in paragraph 5 and/or 6 of the amended statement of claim, or at all, then by undertaking design and construction work for the interchange under the Design and Construct Project Deed Acciona owed the plaintiff and group members a duty:
- (a) to exercise reasonable skill and care in the performance of that work;
 - (b) at least equivalent in scope to that owed by Transport for NSW;

- (c) alternatively, coextensive in part with the duty owed by Transport for NSW.
- 25 If any of the breaches of duty alleged by the plaintiff are established, they are breaches of duty by Acciona.
- 26 If Transport for NSW is liable to the plaintiff or any group members for loss, then:
- (a) by reason of the matters pleaded in paragraphs 13 to 25 above, Acciona is a tortfeasor who would, if sued, be liable to the plaintiff and each group member for the same damage ~~Transport for NSW and Acciona have a coordinate liability;~~
 - (b) if and to the extent that Transport for NSW discharges that ~~coordinate~~ liability to the plaintiff and group members in whole or in part, then Acciona is liable to contribute to Transport for NSW 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).

26A. By reason of the matters pleaded in paragraphs 13-25 above, if Transport for NSW is liable to the plaintiff or any group members for loss, then:

- (a) Transport for NSW and Acciona have a coordinate liability; and
- (b) If and to the extent that Transport for NSW discharges that liability to the plaintiff and group members in whole or in part, then Acciona is liable to make equitable contribution to Transport for NSW.

Direct Negligence

- 27 Acciona owed a duty to Transport for NSW to exercise reasonable skill and care in carrying out each (alternatively, any one or more of) the contractual duties pleaded in paragraphs 15 to 21 above.
- 28 If Transport for NSW is liable to the plaintiff or any group members for loss, then:
- (a) such loss will have been caused in whole (alternatively, in part) by a breach of the duty pleaded in paragraphs 23 and 24 27 above; and

- (b) Acciona is liable to Transport for NSW in damages in an amount reflecting any loss suffered by Transport for NSW caused by Acciona's breach.

Particulars

It was reasonably foreseeable that a failure to take care in carrying out one or more of the contractual duties pleaded in paragraphs 15 to 21 above could result in loss and damage to road users, for which Transport for NSW might be held liable or at least joined in proceedings, thereby incurring legal costs.

Breach of contract

- 29 If Transport for NSW is liable to the plaintiff or any group members for loss, then:
- (a) such loss will have been caused in whole (alternatively, in part) by a breach of one or more of the contractual duties pleaded in paragraphs 15 to 21 above; and
 - (b) Acciona is liable to Transport for NSW in an amount reflecting the loss caused by Acciona's breach.

Aecom Cost Consulting Pty Ltd

- 30 The fourth cross-defendant, Aecom Cost Consulting Pty Ltd ('**Aecom**'):
 - (a) is a company registered under the *Corporations Act*;
 - (b) is capable of being sued in its own name; and
 - (c) was from around 2 May 1990 to 5 April 2016 known as Davis Langdon Australia Pty Ltd (**Davis Langdon**).
- 31 On or around 29 October 2010, the RTA, Acciona and Aecom (then known as Davis Langdon) entered into a deed referred to as the Deed of Appointment of Project Verifier.
- 32 Under the Deed of Appointment of Project Verifier, Aecom:
 - (a) accepted an appointment as project verifier; and
 - (b) agreed to provide the services in Schedule 2 to the deed (the **Verification Services**).

Particulars

Deed of Appointment of Project Verifier, clause 2.1 and Schedule 2

- 33 Under the Deed of Appointment of Project Verifier, Aecom:
- (a) acknowledged that its obligations extended to and included the obligations, functions, duties and services of the "Project Verifier" under the Design and Construct Project Deed and its schedules, exhibits and accompanying appendices;
 - (b) acknowledged that each of the other parties:
 - (i) was relying on the knowledge, skill, expertise and expertise of Aecom in the performance of its obligations under the Deed of Appointment of Project Verifier;
 - (ii) may suffer loss if the Project Verifier did not perform its obligations in accordance with the requirements of the deed;
 - (c) warranted to the other parties that, in performing the Verification 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 reasonably be expected of an expert professional providing services similar to the Verification Services within the design and construction industry generally and the design and construction of major engineering works in particular;
 - (d) acknowledged that the other parties were entitled to and would rely on any certificate or other document signed or given by Davis Langdon under or pursuant to the Deed of Appointment of Project Verifier or the Design and Construct Project Deed and its schedules, exhibits and accompanying appendices; and
 - (e) warranted to the other parties that it would carry out and perform the Services in accordance with the Deed of Appointment of Project Verifier.

Particulars

Deed of Appointment of Project Verifier, clauses 1.1 (definition of "Project Documents"), 3.1, 3.2 and Schedule 1

- 34 On or around 7 November 2014, Aecom certified that:

- (a) Acciona had completed construction in accordance with the Design Documentation it was entitled to use for construction purposes under clause 12.2 of the deed;
- (b) the design used by Acciona for construction purposes was in accordance with the requirements of the deed, including the Scope of Works and Technical Criteria;
- (c) the construction complied with the requirements of the deed, including the Scope of Works and Technical Criteria; and
- (d) the following designs were in accordance with the requirements of the deed, including the Scope of Works and Technical Criteria:
 - (i) structural design;
 - (ii) geometric road design;
 - (iii) urban and landscape design;
 - (iv) safety design;
 - (v) operation and maintenance design;
 - (vi) all other elements of the Project Works carried out by Acciona.

Particulars

Project Verifier's Certificate issued in the form of Schedule 16 to the Design and Construct Project Deed on 7 November 2014

- 35 The duty of care alleged by the plaintiff as against Transport for NSW is a duty with respect to the design and construction of the interchange.

Particulars

Amended Statement of claim, paragraphs 5 and 6

- 36 The breaches of duty alleged by the plaintiff are allegations with respect to the design and construction of the interchange, the verification and certification of which was delegated to Aecom.

Particulars

Amended Statement of claim, paragraph 11, particulars (a)-(n)

- 37 If Transport for NSW owed the plaintiff and group members the duty pleaded in paragraphs 5 and/or 6 of the amended statement of claim, or at all, then by undertaking

the verification and certification work for the design of the interchange Aecom owed the plaintiff and group members a duty:

- (a) to exercise reasonable skill and care in the performance of that work;
- (b) at least equivalent in scope to that owed by Transport for NSW;
- (c) alternatively, coextensive in part with the duty owed by Transport for NSW.

38 If any of the breaches of duty alleged by the plaintiff are established, they are breaches of duty by Aecom.

39 If Transport for NSW is liable to the plaintiff or any group members for loss, then:

- (a) by reason of the matters pleaded in paragraphs 30 to 38 above, Aecom is a tortfeasor who would, if sued, be liable to the plaintiff and each group member for the damage (alternatively, for a portion of the same damage) Transport for NSW and Aecom have a coordinate liability;
- (b) if and to the extent that Transport for NSW discharges that ~~coordinate~~ liability in whole or in part, then Aecom is liable to contribute to Transport for NSW 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).

39A. By reason of the matters pleaded in paragraphs 30-38 above, if Transport for NSW is liable to the plaintiff or any group members for loss, then:

- (a) Transport for NSW and Aecom have a coordinate liability; and
- (b) If and to the extent that Transport for NSW discharges that liability to the plaintiff and group members in whole or in part, then Aecom is liable to make equitable contribution to Transport for NSW.

Direct Negligence

- 40 Aecom owed a duty to Transport for NSW to exercise reasonable skill and care in carrying out one or more of the contractual duties pleaded in paragraphs 32, 33 and 34 above.
- 41 If Transport for NSW is liable to the plaintiff or any group members for loss, then:
- (a) such loss will have been caused in whole (alternatively, in part) by a breach of the duty pleaded in paragraphs 35, 36 and 37 above; and
 - (b) Aecom is liable to Transport for NSW in damages in an amount reflecting any loss suffered by Transport for NSW caused by Aecom's breach.

Particulars

It was reasonably foreseeable that a failure to take care in carrying out one or more of the contractual duties pleaded in paragraphs 35, 36 and 37 above could result in loss and damage to road users, for which Transport for NSW might be held liable or at least joined in proceedings, thereby incurring legal costs.

Breach of contract

- 42 If Transport for NSW is liable to the plaintiff or any group members for loss, then:
- (a) such loss will have been caused in whole (alternatively, in part) by a breach of the contractual duties pleaded in paragraphs 35, 36 and 37 above; and
 - (b) Aecom is liable to Transport for NSW in an amount reflecting the loss caused by Aecom's breach.

Design Joint Venture – SKM and SMEC

- 43 The fifth cross-defendant, Jacobs Group (Australia) Pty Ltd:
- (a) is a company registered under the Corporations Act;
 - (b) is capable of being sued in its own name; and
 - (c) was formerly known as Sinclair Knight Merz Pty Ltd (SKM).
- 44 The sixth cross-defendant, SMEC Australia Pty Ltd (SMEC):
- (a) is a company registered under the Corporations Act; and
 - (b) is capable of being sued in its own name.

DJV Subcontract

- 45 On or about 24 November 2010:
- (a) Acciona (then known as Abigroup Contractors Pty Limited); and
 - (b) SKM and SMEC trading as "Hex DJV" (ABN 41 595 022 046) (the "DJV"),
- entered into a contract (the "DJV Subcontract").

Particulars

The DJV Subcontract was titled "Professional Services Contract" with "Contract No: 221354/PSC/001" and "Name of Project: Hunter Expressway Kurri Kurri to Branxton".

- 46 It was an express term of the DJV Subcontract that SKM and SMEC were jointly and severally liable for the performance and obligations of the DJV under the DJV Subcontract.

Particulars

Formal Instrument of Agreement, clause 2.

- 47 The DJV Subcontract defined "Services" to mean the services described in, or reasonably inferred from, Annexure Part B to the DJV Subcontract, together with those activities the DJV was required to carry out under the DJV Subcontract, such Services including:
- (a) responsibility "for the detail engineering design and documentation" as defined in the Design and Construct Project Deed, in Exhibit A to the Design and Construct Project Deed titled "Scope of Works & Technical Criteria" ("SWTC"), and in the appendices to the SWTC ("SWTC Appendices"), including:
 - (i) geometric design of the highway, interchanges, local roads, pedestrian and cycle paths, and rest areas;
 - (ii) pavement design of the mainline, ramps, interchanges, local roads, crossovers, paths and rest areas;
 - (iii) design of associated road works such as line marking, signage and barriers;
 - (iv) design of lighting for highway, intersections and local roads;

- (v) hydrology, hydraulics and water quality improvement design of waterways, cross drainage and water treatment facilities, drainage of the road cross sections and sub surface; and
- (vi) a durability assessment study and report;
- (b) design and associated tasks required to prepare and achieve approvals for "Issue for Construction" drawings, specifications and reports;
- (c) design deliverables including all roads and pavement design, flood analysis and drainage design, bridges and miscellaneous structures design, road lighting design, durability assessment and assistance in utility coordination;
- (d) all necessary management and coordination tasks as required by the Design and Construct Project Deed and relevant to the DJV's work;
- (e) the "detail planning, coordination and management of the DJV design team" and coordination with Acciona's team, the RTA, Aecom, Proof Checker, external stakeholders and other Acciona consultants to develop designs to achieve external approvals and best meet the team objectives; and
- (f) making use of all standards and specifications required under the Design and Construct Project Deed, including the SWTC and the SWTC Appendices.

Particulars

DJV Subcontract, clause 2.1, Annexure B Part B

48 Clause 2.1 of the DJV Subcontract also defined:

- (a) **"Code"** as meaning the National Code of Practice for the Construction Industry, revised September 2005 and reissued June 2006, as amended and reissued from time to time;
- (b) **"Deliverables"** as meaning the drawings, specifications, sketches, plans, designs, estimates, calculations, reports, models and other information created by the DJV as part of the Services;
- (c) **"Due Skill, Care and Diligence"** as meaning – where the words "exercise due skill, care and diligence" or the like appeared in the DJV Subcontract – the level of skill, care and diligence expected of a professional engineering consultancy practice experienced in projects or activities of a similar nature to the project that was the subject of the DJV Subcontract, namely the Hunter Expressway from Kurri Kurri to Branxton ("Hunter Expressway Project");

- (d) “Guidelines” as meaning the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry, revised September 2005 and reissued June 2006, as amended and reissued from time to time;
- (e) “Head Contract” as meaning an agreement existing between the DJV and the RTA, which included the Design and Construct Project Deed; and
- (f) “Preliminary Design” as meaning any preliminary design included in the documents stated in Annexure Part B to the DJV Subcontract.

49 It was an express term of the DJV Subcontract that, in the documents provided to the DJV that were attachments to the Design and Construct Project Deed, the requirements of and references to the “Contractor” (i.e. Acciona) were deemed to refer to the “Contractor and its Consultants”, which included the DJV in reference to all obligations relevant to the Services.

Particulars

DJV Subcontract, Annexure Part B, heading “General”, second paragraph

50 It was an express term of the DJV Subcontract that the DJV was required to perform the Services in accordance with the DJV Subcontract.

Particulars

Clause 3(a)

51 The DJV acknowledged that the DJV had been engaged by Acciona under the DJV Subcontract for the performance of part of Acciona's obligations under the Design and Construct Project Deed.

Particulars

Clause 3(b)

52 The DJV acknowledged and agreed that the DJV had examined carefully and acquired actual knowledge of the requirements of clauses 12.1 and 12.2 of the Design and Construct Project Deed including but not limited to the:

- (a) meaning of all terms used; and

- (b) requirements of the schedules to, and other clauses of, the Design and Construct Project Deed, referred to in clause 12.1 and 12.2 of the Design and Construct Project Deed.

Particulars

Annexure Part E, special condition S6(a).

- 53 It was an express term of the DJV Subcontract that the DJV would comply with and perform the Services in accordance with all design requirements contained in clauses 12.1 and 12.2 of the Design and Construct Project Deed (including the execution by the DJV of the certificate titled "Subcontractor's Certificate - Design Certification" in the form of Schedule 26 to the Design and Construct Project Deed).

Particulars

Annexure Part E, special condition S6(b)

- 54 The DJV represented and agreed that the DJV:
- (a) had the necessary skills, experience, resources and professional competence to carry out and successfully complete the Services in accordance with the requirements of the DJV Subcontract;

Particulars

Clause 4.1(a)

- (b) must exercise due skill, care and diligence in the performance of the Services;

Particulars

Clause 4.1(b). The level of skill, care and diligence was as prescribed by the definition of Due Skill, Care and Diligence set out above.

- (c) must at all times employ suitably qualified and experienced personnel to perform the Services;

Particulars

Clause 4.1(c)

- (d) had examined and carefully checked any documents (including Preliminary Design) included in Annexure Part B or as otherwise required by the DJV Subcontract;

Particulars

Clause 4.1(d)

- (e) must do all things necessary in the performance of the Services and its obligations under the DJV Subcontract not to cause or contribute to Acciona being in breach of those obligations under the Design and Construct Project Deed as referenced in those parts of the Design and Construct Project Deed included in Annexure Part B;

Particulars

Clause 4.1(f)

- (f) must comply with all requirements of the DJV Subcontract, all “Statutory Requirements” (as defined in the DJV Subcontract) and all applicable and relevant standards in carrying out the Services;

Particulars

Clause 4.1(h)

- (g) must co-ordinate its performance of the Services with other consultants and contractors engaged by Acciona and copy any written communications with other consultants and contractors to Acciona; and

Particulars

Clause 4.1(i)

- (h) must execute and complete the Services so as the Deliverables will be fit for the purpose ascertainable by reference to Annexure Part B.

Particulars

Clause 4.1(j)

55 The DJV acknowledged that the representations set out in paragraph 54 above remained unaffected notwithstanding:

- (a) that drawings, specifications, designs, calculations, reports and other information (including Preliminary Design) had been included in Annexure Part B;
- (b) any receipt or review of, or comment on, the Deliverables by Acciona; and
- (c) any variation under clause 18 of the DJV Subcontract.

Particulars

Clause 4.2

56 The DJV acknowledged to Acciona, and agreed, to have:

- (a) examined carefully and to have acquired actual knowledge of all information made available by or on behalf of Acciona or the RTA to the DJV;
- (b) examined all information relevant to the risks, contingencies and other circumstances having an effect on their provision of Services which is obtainable by making all reasonable enquiries; and
- (c) investigated and inspected the Hunter Expressway Project site and its surroundings.

Particulars

Clause 5(a)(i)-(iii)

57 It was an express term of the DJV Subcontract that failure of the DJV to do all or any of the things it acknowledged and agreed to have done (as set out in the previous paragraph) would not relieve the DJV of any of its liabilities or responsibilities under the DJV Subcontract nor entitle the DJV to any compensation.

Particulars

Clause 5(b)

58 The DJV agreed that:

- (a) Acciona was not bound to review or comment upon the Deliverables or to check them for errors, omissions or compliance with the requirements of the DJV Subcontract; and

- (b) Acciona's receipt of, review of, comment on, rejection of, or failure to review or comment on, the Deliverables provided by the DJV would not relieve the DJV from (or alter or affect) the DJV's liabilities or responsibilities.

Particulars

Clause 16.3(c)

- 59 It was an express term of the DJV Subcontract that the DJV was required to comply with the Code and the Guidelines, but such compliance would not relieve the DJV from the responsibility to perform the DJV Subcontract.

Particulars

Clause 35(a), (d)

- 60 It was an express term of the DJV Subcontract that the DJV was required to plan, establish, implement and maintain a quality system in accordance with AS9001:2008.

Particulars

Clause 25(a)

- 61 It was an express term of the DJV Subcontract that:
- (a) the DJV was prohibited from subcontracting any part of the Services without the prior written approval of Acciona; and
 - (b) any such subcontracting would not relieve the DJV from any liability or obligation under the DJV Subcontract.

Particulars

Clause 31.2

Deeds of indemnity

- 62 It was a term of the DJV Subcontract that after executing the DJV Subcontract, the DJV would provide the Contractor with a deed of covenant in a prescribed form (**Designer's Deed of Covenant**).

Particulars

Annexure Part E, special condition S2; Annexure Part J

- 63 Each of SMK and SMEC executed a Designer's Deed of Covenant.
- 64 By the Designer's Deed of Covenant, each of SMK and SMEC warranted to the RTA that in:
- (a) performing design work under the DJV Subcontract, including the detail engineering design and documentation as defined in the Design and Construct Project Deed, SWTC, and SWTC Appendices; and
 - (b) providing any certificate under clause 12.2(h) of the Design and Construct Project Deed,
- the DJV:
- (c) owed a duty of care to RTA;
 - (d) would exercise reasonable skill and care; and
 - (e) was aware that RTA would be relying upon the skill and judgment of the DJV in performing such work.

Contribution

- 65 The duty of care alleged by the plaintiff as against Transport for NSW is a duty with respect to the design and construction of the interchange.

Particulars

Amended Statement of claim, paragraphs 5 and 6

- 66 The breaches of duty alleged by the plaintiff against Transport for NSW are allegations with respect to the design and construction of the interchange.

Particulars

Amended Statement of claim, paragraph 11, particulars (a)-(n)

- 67 If Transport for NSW owed the plaintiff and group members the duty pleaded in paragraphs 5 and/or 6 of the amended statement of claim then, by reason of all or some of the matters pleaded in paragraphs 43 to 66 above:
- (a) SKM and SMEC owed the plaintiff and group members a duty to exercise reasonable skill and care in performing work with respect to the design and construction of the interchange;

- (b) that duty was coextensive, at least in part, with the duty owed by Transport for NSW for NSW.
- 68 In the premises of paragraph 67 above, if any of the breaches alleged by the plaintiff against Transport for NSW are established, SKM and SMEC are liable for those breaches insofar as the breaches concern design and construction work undertaken by the DJV.
- 69 If Transport for NSW is liable to the plaintiff or any group members for loss, then:
- (a) by reason of the matters pleaded in paragraphs 67 to 68 above, each of SKM and SMEC is a tortfeasor who would, if sued, be liable to the plaintiff and each group member for the damage (alternatively, for a portion of the same damage);
- (b) if and to the extent that Transport for NSW discharges that liability in whole or in part, then SKM and SMEC are liable to contribute to Transport for NSW an amount that is just and equitable, by reason of:
- (i) section 5 of the *Law Reform (Miscellaneous Provisions) Act 1946* (NSW);
and/or
- (ii) section 12 of the *Law Reform (Miscellaneous Provisions) Act 1965* (NSW).
- 70 By reason of the matters pleaded in paragraphs 67 to 68 above, if Transport for NSW is liable to the plaintiff or any group members for loss, then:
- (a) Transport for NSW, SKM and SMEC have a coordinate liability; and
- (b) If and to the extent that Transport for NSW discharges that liability to the plaintiff and group members in whole or in part, then SKM and SMEC are liable to make equitable contribution to Transport for NSW.

Direct Negligence

71 By reason of the matters pleaded in:

- (a) paragraphs 45 to 61 above; and/or
- (b) paragraphs 62 to 64 above.

SKM and SMEC each owed a duty to Transport for NSW (then the RTA) to exercise reasonable skill and care in performing design and construction work on the Hunter Expressway Project.

72 If Transport for NSW is liable to the plaintiff or any group members for loss, then, insofar as the breaches concern design and construction work undertaken by the DJV:

- (a) such loss will have been caused, at least in part, by a breach of the duties pleaded in paragraphs 66 and 71 above; and
- (b) SKM and SMEC are liable to Transport for NSW in damages in an amount reflecting any loss suffered by Transport for NSW caused by breaches of duty by SKM and SMEC.

Breach of warranty

73 If Transport for NSW is liable to the plaintiff or any group members for loss, then insofar as the breaches concern design and construction work undertaken by the DJV:

- (a) such loss will have been caused, at least in part, by a breach of the warranties pleaded in paragraph 64 above; and
- (b) SKM and SMEC are liable to Transport for NSW in an amount reflecting the loss caused by that breach.

GHD Pty Ltd

74 The seventh cross-defendant, GHD Pty Ltd (GHD):

- (a) is a company registered under the Corporations Act; and
- (b) is capable of being sued in its own name.

- 75 The Deed of Appointment of Project Verifier expressly contemplated that Aecom could subcontract design verification services to GHD.

Particulars

Deed of Appointment of Project Verifier, clause 3.4

- 76 On or about 3 December 2010, Aecom (then known as Davis Langon) entered into a subcontract with GHD (**GHD Subcontract**), pursuant to which GHD agreed to provide the Services (as defined in the GHD Subcontract) to Aecom.

Particulars

The full title of the GHD Subcontract is 'Independent Contractor Agreement'.

- 77 It was a term of the GHD Subcontract that GHD acknowledged that it:
- (a) 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;
 - (b) was obliged to observe the obligations of Aecom under the Deed of Appointment of Project Verifier and Project Deed as relevant to the Services and would perform and discharge its obligations under the GHD Subcontract to enable Aecom to perform and discharge its corresponding obligations and exercise its rights as relevant to the Services; and
 - (c) would not breach any obligations under the GHD Subcontract which may cause Aecom to be in breach of its obligations or to not be capable of exercising its rights under the Deed of Appointment of Project Verifier.

Particulars

GHD Subcontract, clause 2.1

- 78 It was a term of the GHD Subcontract that GHD warranted that GHD would perform the Services (as defined in the GHD Subcontract):
- (a) in accordance with the GHD Subcontract;

- (b) in compliance with all laws (including ordinances, by-laws and regulations), legislative requirements, authorities and any other relevant standards or codes; and
- (c) 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.

Particulars

GHD Subcontract, clause 2.2

79 The Services to be provided by GHD included:

- (a) review of design documentation for each design package for compliance with the Project Deed including the SWTC;
- (b) comment on and monitor the development of the design;
- (c) review of final design documentation for each design package;
- (d) review Acciona's Design Consultant's verification of final design documentation and schedules;
- (e) record any design departures from the requirements of the Project Deed and SWTC in the Design Verification Reports for relevant Design Package;
- (f) issue Design Verification Reports to Acciona's Design Consultant for actions on identified design departures;
- (g) issue a final Design Verification Report; and
- (h) provide RTA with detailed responses to any comments raised by the RTA on any certificate provided pursuant to the Certification Schedule.

Particulars

Schedules 1 and 3 to the GHD Subcontract

- 80 In or about February 2011, GHD issued a Project Management Plan (**PMP**) for Aecom (then known as Davis Langdon) in respect of the design verification of the project.

Particulars

Davis Langdon Hunter Expressway – Kurri Kurri to Branxton project Design Verification Project Management Plan Revision 0 dated February 2011

- 81 The PMP provided that:
- (a) GHD would provide design verification reports for each design lot, at three design stages for Civil Design Lots or four design stages for Structural Design Lots; and
 - (b) the design verification reports would contain a review of the design documentation to verify that:
 - (i) the design documentation complied with the requirements of the Design and Construct Project Deed, including the SWTC, relevant project plans and documents in the quality system;
 - (ii) non-compliances identified in previous reviews were rectified in a structured and auditable process.

Contribution

- 82 The duty of care alleged by the plaintiff as against Transport for NSW is a duty with respect to the design and construction of the interchange.

Particulars

Amended Statement of claim, paragraphs 5 and 6

- 83 The breaches of duty alleged by the plaintiff against Transport for NSW are allegations with respect to the design and construction of the interchange.

Particulars

Amended Statement of claim, paragraph 11, particulars (a)-(n)

- 84 If Transport for NSW owed the plaintiff and group members the duty pleaded in paragraphs 5 and/or 6 of the amended statement of claim then, by reason of all or some of the matters pleaded in paragraphs 74 to 81 above:
- (a) GHD owed the plaintiff and group members a duty to exercise reasonable skill and care in performing work with respect to the design and construction of the interchange;
 - (b) that duty was coextensive, at least in part, with the duty owed by Transport for NSW.
- 85 In the premises of paragraph 84 above, if any of the breaches alleged by the plaintiff against Transport for NSW are established, GHD are liable for those breaches insofar as the breaches concern design and construction work undertaken by GHD.
- 86 If Transport for NSW is liable to the plaintiff or any group members for loss, then:
- (c) by reason of the matters pleaded in paragraphs 84 to 85 above, GHD is a tortfeasor who would, if sued, be liable to the plaintiff and each group member for the damage (alternatively, for a portion of the same damage);
 - (d) if and to the extent that Transport for NSW discharges that liability in whole or in part, then GHD is liable to contribute to Transport for NSW an amount that is just and equitable, by reason of:
 - (iii) section 5 of the *Law Reform (Miscellaneous Provisions) Act 1946* (NSW);
and/or
 - (iv) section 12 of the *Law Reform (Miscellaneous Provisions) Act 1965* (NSW).
- 87 By reason of the matters pleaded in paragraphs 85 to 86 above, if Transport for NSW is liable to the plaintiff or any group members for loss, then:
- (a) Transport for NSW and GHD have a coordinate liability; and
 - (b) If and to the extent that Transport for NSW discharges that liability to the plaintiff and group members in whole or in part, then GHD is liable to make equitable contribution to Transport for NSW.

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[s] that court fees may be payable during these proceedings. These fees may include a hearing allocation fee.

Signature



Capacity

Solicitor for the cross-claimant

Date of signature

12 FEBRUARY 2026

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 New South Wales, Sydney Registry, Law Courts Building, Queens Square, 184 Phillip Street, SYDNEY NSW 2000
Postal address	Supreme Court of New South Wales, Sydney Registry, GPO Box 3, SYDNEY NSW 2001
Telephone	1300 679 272

[on separate page]

PARTY DETAILS

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

PARTIES TO THIS CROSS-CLAIM

Cross-claimant

Transport for NSW ABN 18 804 239 602

Cross-defendants

Brett Andrew Button

Linq Buslines Pty Ltd ACN 131 153 896

Acciona Infrastructure Projects Australia Pty
Ltd ACN 000 201 516

Aecom Cost Consulting Pty Ltd
ACN 008 657 289

Jacobs Group (Australia) Pty Ltd
ACN 001 024 095

SMEC Australia Pty Limited
ACN 065 475 149

GHD Pty Ltd
ACN 008 488 373