



Form 7A (version 5)
UCPR 14.3

R.H Kenna (L.S.)
Principal Registrar &
Chief Executive Officer

FIRST 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 -002

TITLE OF PROCEEDINGS

First plaintiff	Adam James Bray
First defendant	Transport for NSW ABN 18804239602
Number of defendants	3

TITLE OF FIRST CROSS-CLAIM

First cross-claimant	Transport for NSW ABN 18804239602
First cross-defendant	Brett Andrew Button
Number of cross-defendants	7

FILING DETAILS

Filed for	GHD Pty Ltd ACN 008 488 373 , seventh cross-defendant
Filed in relation to	First 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 First Cross-Claim Statement of Cross-Claim (**First Cross-Claim**) filed (in an amended form) on 12 February 2026 as follows, adopting the defined terms therein unless stated otherwise or the context requires.

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

Brett Andrew Button

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

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

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

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

- (a) admits Mr Button was:
 - (i) under the influence of an opioid painkiller, Tramadol;
 - (ii) driving dangerously and negligently, including at an 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 6A of the First Cross-Claim as they contain no allegations against GHD.

Linq Buslines

6 GHD admits paragraph 7 of the First Cross-Claim

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

Transport for NSW

8 GHD admits paragraph 7 of the First Cross-Claim.

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

Acciona Infrastructure Projects Australia Pty Ltd

10 GHD admits paragraph 13 of the First Cross-Claim.

11 GHD does not plead to paragraphs 14 to 29 of the First Cross-Claim as they contain no allegations against GHD.

AECOM Cost Consulting Pty Ltd

12 GHD admits paragraph 30 of the First Cross-Claim.

13 GHD does not plead to paragraphs 31 to 42 of the First Cross-Claim as they contain no allegations against GHD.

Design Joint Venture – SKM and SMEC

14 GHD admits paragraphs 43 and 44 of the First Cross-Claim.

15 GHD does not plead to paragraphs 45 to 73 of the First Cross-Claim as they contain no allegations against GHD.

GHD Pty Ltd

- 16 GHD admits paragraph 74 of the First Cross-Claim (noting that the word “nveame” should read “name”).
- 17 As to paragraph 75 of the First Cross-Claim, GHD:
- (a) says clause 3.4 of the Deed of Appointment of Project Verifier provided that subject to clause 3.3 of the Deed of Appointment of Project Verifier, the Project Verifier could not subcontract the performance of any of the Services without the prior written consent of the Other Parties (which consent must not be unreasonably withheld or delayed, and will be deemed to have been given in relation to a party if no response has been received from that party within 7 days of the request to subcontract); and
 - (b) otherwise admits the paragraph.
- 18 As to paragraph 76 of the First Cross-Claim, GHD:
- (a) admits that it entered into a contract with Aecom (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. Aecom (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 Aecom 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 76 of the First Cross-Claim.
- 19 As to paragraph 77 of the First 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 18 above;
- (c) repeats and relies upon the terms of the GHD Subcontract in full; and
- (d) otherwise denies paragraph 77 of the First Cross-Claim.

20 As to paragraph 78 of the First 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 18 above;
- (c) repeats and relies upon the terms of the GHD Subcontract in full; and
- (d) denies paragraph 78 of the First Cross-Claim.

21 As to paragraph 79 of the First 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 18 above;
- (b) says that, with respect to the services identified in subparagraphs 79(a) to 79(h) of the First 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 79 of the First Cross-Claim.

22 As to paragraph 80 of the First 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 80 of the First Cross-Claim.

23 As to paragraph 81 of the First 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 18 above;
- (c) admits that GHD issued Design Verification Reports; and
- (d) otherwise denies paragraph 81 of the First Cross-Claim.

24 GHD does not admit paragraph 82 of the First Cross-Claim.

25 GHD does not admit paragraph 83 of the First Cross-Claim.

26 As to paragraph 84 of the First Cross-Claim, GHD:

- (a) says that the paragraph is embarrassing and liable to be struck out because Transport for NSW does not identify:
 - (i) how it is said that GHD owed a duty of care to the plaintiff and each group member 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 Transport for NSW or “alternatively, coextensive in part” with the duty owed by Transport for NSW; and
- (b) denies paragraph 84 of the First Cross-Claim.

27 As to paragraph 85 of the First Cross-Claim, GHD:

- (a) repeats and relies upon the matters pleaded in paragraphs 24 to 26 above;

(b) says that the First Cross-Claim is embarrassing because Transport for NSW 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 or group members; and

(c) denies paragraph 85 of the First Cross-Claim.

28 As to paragraph 85 of the First Cross-Claim, GHD:

(a) repeats and relies upon the matter pleaded in paragraphs 24 to 27 above; and

(b) denies paragraph 85 of the First Cross-Claim.

29 As to paragraph 86 of the First Cross-Claim, GHD:

(a) repeats and relies upon the matters pleaded in paragraphs 24 to 27 above; and

(b) denies paragraph 86 of the First Cross-Claim.

Limitation under the EPA Act

30 In further answer to the entirety of Transport for NSW's claims against GHD, GHD says that:

(a) the design and construction of the Branxton 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 Transport for NSW'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) Transport for NSW's claims against GHD are claims for recovery of 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 Branxton 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 Branxton Interchange was 22 March 2024;
 - (iii) the First 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 First 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 Branxton 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 Branxton Interchange could be brought was 7 November 2024;
 - (iii) the First Cross-Claim was filed on 19 January 2026, 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 First Cross-Claim against GHD are barred.

Limits to recovery by the plaintiff and group members

Civil Liability Act 2002 (NSW)

31 In further answer to the entirety of Transport for NSW'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)

- 32 In further answer to the entirety of Transport for NSW’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

- 33 In further answer to the entirety of Transport for NSW’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

34 In further answer to the entirety of Transport for NSW'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 a passenger should be reduced by such extent as the Court thinks just and equitable.

Relief

35 GHD denies that Transport for NSW is entitled to the relief claimed against GHD in the First 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



Capacity

Solicitor on record

Date of signature

27 March 2026