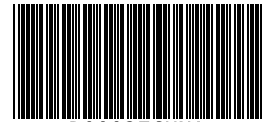




Filed: 30 June 2026 11:01 AM



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### Amended Defence

#### COURT DETAILS

|             |                      |
|-------------|----------------------|
| Court       | Supreme Court of NSW |
| Division    | Common Law           |
| List        | Common Law General   |
| Registry    | Supreme Court Sydney |
| Case number | 2024/00338021        |

#### TITLE OF PROCEEDINGS

|                      |                                                      |
|----------------------|------------------------------------------------------|
| First Plaintiff      | Adam James Bray                                      |
| First Defendant      | TRANSPORT FOR NSW<br>ABN 18804239602                 |
| Second Defendant     | ACCIONA INFRASTRUCTURE PROJECTS AUSTRALIA PTY<br>LTD |
| Number of Defendants | 3                                                    |

#### FILING DETAILS

|           |                                |
|-----------|--------------------------------|
| Filed for | TRANSPORT FOR NSW, Defendant 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 Lodge Document, along with any other documents listed below, were filed by the Court.

Amended Defence (Amended Defence to ASOC - TfNSW.pdf)

[attach.]

Form 7A (version 5)  
UCPR 14.3

## **AMENDED DEFENCE TO AMENDED STATEMENT OF 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            | <b>Adam James Bray</b>                                                           |
| First Defendant      | <b>Transport for New South Wales ABN 18 804 239 602</b>                          |
| Second Defendant     | <b>Acciona Infrastructure Projects Australia Pty Limited<br/>ACN 000 201 516</b> |
| Third Defendant      | <b>Aecom Cost Consulting Pty Limited ACN 008 657 289</b>                         |
| Number of Defendants | <b>3</b>                                                                         |

### **FILING DETAILS**

|                                |                                                       |
|--------------------------------|-------------------------------------------------------|
| Filed for                      | <b>Transport for New South Wales, First Defendant</b> |
| Legal representative           | Brian Moroney, Moray & Agnew                          |
| Legal representative reference | BGM:500392                                            |
| Contact name and telephone     | Brian Moroney, +61 2 9232 2255                        |
| Contact email                  | bmoroney@moray.com.au                                 |

### **PLEADINGS AND PARTICULARS**

The first defendant, Transport for New South Wales ABN 18 804 239 602 ("**TfNSW**") pleads and responds to the amended statement of claim ("**SOC**") filed 15 July 2025 as follows:

#### **PLEADINGS, PARTICULARS AND COMMON QUESTIONS**

#### **PLEADINGS AND PARTICULARS**

1. In answer to paragraph 1 of the SOC, TfNSW:
  - (a) admits that the plaintiff brings this proceeding in his own right;
  - (b) admits that the plaintiff seeks to bring this proceeding as a representative proceeding pursuant to Part 10 of the *Civil Procedure Act 2005* (NSW) ("**CPA**"); and
  - (c) otherwise does not admit the allegation.
2. TfNSW admits paragraph 2 of the SOC.

## First Defendant

3. In answer to paragraph 3 of the SOC, TfNSW:

- (a) in relation to sub-paragraph (a):
  - (i) admits that the defendant is a corporation constituted by s 3C(1) of the *Transport Administration Act 1988* (NSW);
  - (ii) does not know and cannot admit what is meant by 'all material times' and, in those premises, does not admit the balance of the subparagraph;
- (b) in relation to sub-paragraph (b):
  - (i) admits that Wine Country Drive was as at 11 June 2023 a road running from Branxton to Cessnock;
  - (ii) admits that Wine Country Drive was as at 11 June 2023 a Main Road (within the meaning of s 46 of the *Roads Act 1993*) and known as M220;
  - (iii) admits that Wine Country Drive was as at 11 June 2023 administered and maintained by TfNSW;
  - (iv) otherwise denies that Wine Country Drive was "owned and operated" by TfNSW;
  - (v) does not know and cannot admit what is meant by 'all material times' and, in those premises, does not admit the balance of the subparagraph;
- (c) admits sub-paragraph (c), save that the reference to 'Wine County Road' therein should be a reference to 'Wine Country Drive';
- (d) in relation to sub-paragraph (d):
  - (i) admits that Wine Country Drive is classified as a main road for the purposes of s 46 of the *Roads Act*; and
  - (ii) otherwise denies the paragraph.

4. In answer to paragraph 4 of the SOC, TfNSW:

- (a) repeats and relies upon paragraph 3 of this defence;
- (b) says that it does not know and cannot admit what is meant by 'at all material times';
- (c) admits that as at 11 June 2023 and subject to any delegation of responsibility, TfNSW had responsibility for the design, construction, management and maintenance of Wine Country Drive and the Interchange; and
- (d) otherwise denies the paragraph.

5. In answer to paragraph 5 of the SOC, TfNSW:

- (a) admits it owed to road users of Wine Country Drive 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*) in respect of Wine Country Drive, including the interchange;

- (b) says that reasonable care in the exercise of its statutory powers is assessed by reference to road users taking reasonable care for their own safety;
- (c) says that at the time of the design and construction of Wine Country Drive and the interchange, this duty rested with TfNSW’s predecessor Roads and Traffic Authority (**RTA**);
- (d) says that TfNSW is responsible for any liabilities incurred by the RTA in discharge of this duty;

#### **Particulars**

The liabilities of the RTA passed to Roads and Maritime Services and subsequently to TfNSW: *Transport Legislation Amendment Act 2011* (NSW), Sched 1, item 62 (inserting s 183(2) into the *Transport Administration Act 1988* (NSW)) and *Transport Administration Amendment (RMS Dissolution) Act 2019* (NSW), item 35 (inserting Schedule 7, item 218(2) into the *Transport Administration Act 1988*)

- (e) says that in discharge of its duty, RTA engaged competent contractors and consultants to carry out and to review and verify the design and construction of the interchange, namely:
  - (i) Abigroup Contractors Pty Ltd (**Abigroup**);

#### **Particulars**

Design and Construct Project Deed entered into between the Roads and Traffic Authority of New South Wales (**RTA**) and Abigroup on 29 October 2010

- (ii) Davis Langdon Pty Ltd (**Davis Langdon**); and

#### **Particulars**

Deed of Appointment of Project Verifier entered into between the RTA, Abigroup and Davis Langdon Australia Pty Ltd on 29 October 2010

- (iii) Sinclair Knight Merz Pty Ltd (**SKM**) in joint venture with SMEC Australia Pty Ltd (**SMEC**);

#### **Particulars**

Designer’s Deed of Covenant executed by SKM and SMEC

- (iv) SMEC in its own right;

#### **Particulars**

Designer’s Deed of Covenant executed by SMEC

- (v) Douglas Partners Pty Ltd (**Douglas Partners**);

**Particulars**

Designer's Deed of Covenant executed by Douglas Partners

- (vi) HBO+EMTB Urban and Landscape Design Pty Limited (**HBO+EMTB**);

**Particulars**

Designer's Deed of Covenant executed by HBO+EMTB

- (vii) Renzo Tonin & Associates Pty Limited (**Renzo Tonin**);

**Particulars**

Designer's Deed of Covenant executed by Renzo Tonin

- (viii) GHD Group Pty Ltd (**GHD**).

**Particulars**

GHD Project Management Plan for Hunter Expressway – Kurri Kurri to  
Branxton Project Design Verification, February 2011

- (f) says that in discharge of its duty, RTA:
- (i) was reasonably entitled to rely; and
  - (ii) in fact relied,
- on the contractors and consultants referred to in subparagraph (e) above to perform their respective design, review and/or verification obligations with the exercise of reasonable skill and care;
- (g) otherwise does not admit that the content of the duty owed by RTA (or TfNSW) extended to “ensuring” or “performing” the matters set out in subparagraphs 5(a)-(m) of the SOC; and
- (h) says further that insofar as it is alleged that the duty extends to a duty not to cause any particular Group Member pure mental harm, the existence of the duty is to be assessed having regard to s 32 of the **Civil Liability Act 2002** (NSW).
6. In answer to paragraph 6 of the SOC, TfNSW repeats its answer to paragraph 5 of this Defence, and otherwise denies the paragraph.
7. TfNSW admits paragraph 7 of the SOC.
8. TfNSW admits paragraph 8 of the SOC.
9. In answer to paragraph 9 of the SOC, TfNSW:
- (a) admits that at a point near or after the Wine Country Drive exit and prior to the Hunter Valley Expressway, the driver lost control of the bus, causing the bus to tip and fall on the bus's left-hand side and slide into, and collide with, a guardrail that had been installed on the left hand side of the interchange;
  - (b) admits that the guardrail and its supports intruded into the passenger cabin;

- (c) otherwise denies the paragraph; and
  - (d) says further that the driver was driving the bus negligently, including at excessive and unreasonable speed, causing him to lose control of the bus and cause the accident including the plaintiffs' injuries, losses and damage.
10. In answer to paragraph 10 of the SOC, TfNSW relies upon paragraphs 8 and 9 of this defence and otherwise:
- (a) admits sub-paragraph (a);
  - (b) does not know and cannot admit sub-paragraph (b);
  - (c) in relation to sub-paragraph (c):
    - (i) repeats paragraph 1 of this defence; and
    - (ii) does not know and cannot admit the sub-paragraph.
11. In answer to paragraph 11 of the SOC, TfNSW:
- (a) repeats and relies upon paragraphs 1, 5, 6, 9 and 10 of this defence; and
  - (b) denies the paragraph.
- 11A. Further and in answer to the whole of the SOC, TfNSW relies on sections 5B – 5E of the *Civil Liability Act* and says:
- (a) the claims brought in these proceedings are claims to which Part 1A of the *Civil Liability Act* applies;
  - (b) TfNSW was not negligent within the meaning of s 5 of the *Civil Liability Act*;
  - (c) TfNSW was not negligent by or for failing to take precautions against the alleged risk of harm, by reason of sections 5B and 5C of the *Civil Liability Act*;
  - (d) any injuries, loss or damages suffered by the plaintiffs (which are not admitted) were not causally connected to any act or omission of TfNSW pursuant to section 5D of the *Civil Liability Act* because:
    - (i) any negligence on the part of TfNSW (which is denied) was not a necessary condition of the occurrence of the harm;
    - (ii) it is not appropriate for the scope of TfNSW's liability (which is denied) to extend to the harm so caused (which is denied);
    - (iii) responsibility for the harm should not be imposed on TfNSW; and
    - (iv) in the premises of on or a combination of (i)-(iii), there should be no finding that any negligence by TfNSW caused the harm alleged.
- 11B. Further and in answer to the whole of the SOC, TfNSW:
- (a) says that it is a 'public or other authority' within the meaning of section 41 of the *Civil Liability Act*;

- (b) says that if and to the extent that TfNSW is liable for the acts or omissions alleged in the SOC, those acts or omissions were in the exercise of power:
  - (i) conferred by statute; and
  - (ii) of a kind that persons generally are not authorised to exercise without specific statutory authority;

#### **Particulars**

- (A) The acts or omissions particularised in paragraph 11 of the SOC concern the planning, approval and carrying out of “road work” or “traffic control work” under Part 6 of the *Roads Act*, which may only occur by or with the approval of a roads authority or TfNSW.
  - (B) Section 138 of the *Roads Act* prohibits a person from erecting a structure or carrying out a work in, on or over a main road other than with the consent of the appropriate roads authority and the concurrence of TfNSW.
- (c) says that the alleged acts or omissions were not so unreasonable that an authority having the same powers could not properly consider the alleged acts or omissions to be a reasonable exercise of, or failure to exercise, its statutory powers; and
  - (d) in the premises and by operation of s 43A(3) of the *Civil Liability Act*, TfNSW is not liable for the conduct alleged.
- 11C. Further and in answer to the whole of the SOC, TfNSW says that insofar as the claims in this proceeding comprise claims for pure mental harm arising wholly or partly from mental or nervous shock in connection with another person being killed, injured or put in peril by an alleged act or omission by TfNSW, by reason of s 30 of the *Civil Liability Act*:
- (a) a claimant is not entitled to recover damages for pure mental harm unless:
    - (i) the claimant witnessed, at the scene, the victim being killed, injured or put in peril; or
    - (ii) the claimant is a close member of the family of the victim within the meaning of s 30(5) of the *Civil Liability Act*; and
- 11D. Further and in answer to the whole of the SOC, TfNSW says that insofar as the claims in this proceeding comprise claims for pure mental harm resulting from negligence, by reason of s 31 of the *Civil Liability Act* TfNSW is not liable to pay damages unless the harm consists of a recognised psychiatric illness.
- 11E. Further and in answer to the whole of the SOC, TfNSW says that Part 4 of the *Motor Accident Injuries Act 2017* applies to the quantification of any damages payable to the Plaintiff and to Group Members.

11F. Further and in answer to the whole of the SOC, TfNSW says that to the extent the Plaintiff and any Group Member has received statutory benefits under the *Motor Accident Injuries Act 2017*, by reason of the prohibition against double recovery the quantification of any damages payable to him or to any such Group Member is reduced to account for those benefits.

11FA. In the alternative and in answer to the whole of the SOC, TfNSW says that if (which is denied) former section 109ZK or current section 6.20 of the *Environmental Planning and Assessment Act 1979* (NSW) (EPAA) operate as a bar to recovery by TfNSW against any cross-defendant to the Amended First Cross-Claim, then former section 109ZK or current section 6.20 of the EPAA also operate as a limitation upon recovery by the plaintiff against TfNSW, including in circumstances where:

- (a) with respect to former section 109ZK(1) of the EPAA:
  - (i) the interchange was first used on 22 March 2014;
  - (ii) if (which is denied) section 109ZK(1) applies, then by reason of the interchange first being used on 22 March 2014, the latest date for bringing a building action in relation to the design and construction of the interchange was 22 March 2024; and
  - (iii) the Statement of Claim was filed on 12 September 2024, being later than 22 March 2024;
- (b) with respect to section 6.20 of the EPAA:
  - (i) completion of the interchange occurred on 7 November 2014 at the latest;
  - (ii) if (which is denied) section 6.20 applies, then by reason of the interchange being completed on 7 November 2014 at the latest, the latest date a civil action for loss or damage arising out of or in connection with defective building work with respect to the interchange could be brought was 7 November 2024; and
  - (iii) the plaintiff's Statement of Claim was filed on 12 September 2024, being later than 7 November 2024.

### **Particulars**

The Defences to TfNSW's Amended First Cross-Claim which rely upon former section 109ZK or current section 6.20 of the EPAA are:

- (A) Defence of Fifth Cross-Defendant to Amended First Cross-Claim, Jacobs Group (Australia) Pty Ltd, filed on 10 April 2026, paragraph 47.
- (B) Defence of Seventh Cross-Defendant to Amended First Cross-Claim, GHD Pty Ltd, filed on 1 April 2026, paragraph 30.

## **Second Defendant**

11G. TfNSW does not plead to amended paragraphs 12 to 24 of the amended statement of claim, which do not contain allegations against it, and otherwise does not admit the paragraphs.

## **Third Defendant**

11H. TfNSW does not plead to amended paragraphs 25 to 33 of the amended statement of claim, which do not contain allegations against it, and otherwise does not admit the paragraphs.

## **COMMON QUESTION AND GROUP MEMBERS**

12. In answer to paragraph 12, TfNSW:

- (a) repeats and relies upon paragraphs 1 and 10 of this defence; and
- (b) does not admit the paragraph.

13. In answer to paragraph 13, TfNSW:

- (a) repeats and relies upon paragraphs 1 and 10 of this defence; and
- (b) does not admit the paragraph.

14. In answer to paragraph 14, TfNSW says that if there are common questions of law or fact in these proceedings (which it does not admit), the following questions would also be common:

- (a) What were the precise facts and circumstances that caused the accident, including the role and responsibilities of others such as the bus driver and/or his employer, design and construction practitioners and other contractors?
- (b) What was the relevant risk of harm?
- (c) Did the defendants (or the predecessor to the first defendant, the RTA) owe duties of care? If so, what is the nature and scope of the defendants' duties of care, including any reasonable precautions the defendants were required to take?
- (d) Did the defendants breach any duties of care?
- (e) Was any breach of duties of care by the defendants causative of the claimed loss(es)?

## **RELIEF**

15. TfNSW denies liability for all or any of the relief claimed in the SOC under the heading "Relief Claimed".

**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 of legal representative



Capacity

Solicitor for the defendant

Date of signature

30 June 2026