

DRAFT NOTICE OF CROSS APPEAL

COURT DETAILS

Court	Supreme Court of New South Wales, Court of Appeal
Registry	Sydney
Case number	2025/00273969

TITLE OF PROCEEDINGS

Cross appellant	Elecnor Australia Pty Ltd (ACN 168 435 658)
First cross respondent	Clough Projects Australia Pty Ltd (ACN 109 444 215)
Number of cross respondents	3

PROCEEDINGS IN THE COURT BELOW

Title below	Elecnor Australia Pty Ltd v Clough Projects Australia Pty Ltd & Or
Court below	Supreme Court of New South Wales
Case number below	2024/00467526
Date[s] of hearing	28-29 May 2025
Material date	19 June 2025
Decision of	Justice Stevenson

FILING DETAILS

Filed for	Elecnor Australia Pty Ltd , cross-applicant
Filed in relation to	Decision below in relation to plaintiff's amended notice of motion
Legal representative	Kon Nakousis, Gilbert + Tobin
Legal representative reference	1054117
Contact name and telephone	Kon Nakousis, +61 2 9263 4708 Lucy Zimdahl, +61 2 9263 4098
Contact email	knakousis@gtlaw.com.au

HEARING DETAILS

This notice of appeal is listed for directions at

TYPE OF APPEAL

Commercial Arbitration Appeal

DETAILS OF APPEAL

1 This cross appeal is brought under s 101(2)(e) of the *Supreme Court Act 1970* (NSW) and r 51.11 of the *Uniform Civil Procedure Rules 2005* (NSW)

- 2 Leave to cross appeal was granted on
- 3 The cross appellant has not filed a notice of intention to appeal.
- 4 The cross appellant appeals from the part of the decision below in relation to order 1 of the orders of his Honour Justice Stevenson made on 8 July 2025.

APPEAL GROUNDS

- 1 The primary judge erred in failing to find that [29(d)], read with [7], of the cross-respondents' Commercial List Response raised a matter capable of settlement by arbitration as a discrete controversy, which must be stayed pursuant to s 7(2) of the *International Arbitration Act 1974* (Cth): cf *Elecnor Australia Pty Ltd v Clough Projects Australia Pty Ltd* [2025] NSWSC 610 at [105].

ORDERS SOUGHT

- 1 Cross appeal allowed.
- 2 Set aside order 1 of the orders made on 8 July 2025 and in its place order that:
Pursuant to section 7(2) of the *International Arbitration Act 1974* (Cth) and in accordance with clause 23.3 of the Transgrid Project Energy Connect Project Joint Venture Deed (as amended) between the plaintiff and first defendant, the matters raised:
- a. in the cross-claim (excluding that raised by [15] of the Commercial List Cross-Claim Statement filed 14 March 2025); and
 - b. the claim by the defendants at [29(d)], read with [7], of the Commercial List Response,
- be stayed.
- 3 Costs of the cross appeal.

UCPR 51.22 CERTIFICATE

The right of appeal is not limited by a monetary sum

SIGNATURE OF LEGAL REPRESENTATIVE

This notice of appeal does not require a certificate under clause 4 of Schedule 2 to the [Legal Profession Uniform Law Application Act 2014](#).

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

Signature

Capacity

Solicitor for the cross-applicant

Date of signature

NOTICE TO CROSS RESPONDENTS

If your solicitor, barrister or you do not attend the hearing, the court may give judgment or make orders against you in your absence. The judgment may be for the orders sought in the notice of cross appeal and for the cross appellant's costs of bringing these proceedings.

Before you can appear before the court, you must file at the court an appearance in the approved form.

HOW TO RESPOND

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

You can get further information about what you need to do to respond to the notice of appeal from:

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

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

REGISTRY ADDRESS

Street address	Supreme Court of New South Wales, Court of Appeal Law Courts Building Queen's Square Level 5, 184 Phillip Street Sydney NSW 2000
Postal address	GPO Box 3 Sydney NSW 2001
Telephone	1300 679 272

PARTY DETAILS

A list of parties must be filed and served with this notice of appeal.

[on separate page]

FURTHER DETAILS ABOUT CROSS-APPELLANT**Cross-applicant**

Name Elecnor Australia Pty Ltd (ACN 168 435 658)
 Address Level 19
 90 Collins Street
 Melbourne VIC 3000

Legal representative for cross-applicant

Name Kon Nakousis
 Practising certificate number L0049314
 Firm Gilbert + Tobin
 Contact solicitor Kon Nakousis and Lucy Zimdahl
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DETAILS ABOUT CROSS-RESPONDENTS**First cross-respondent**

Name Clough Projects Australia Pty Ltd (ACN109444215)
 Address QV1, Level 6
 250 St Georges Terrace
 Perth WA 6000

Second cross-respondent

Name Salvatore Algeri
 Address c/- Deloitte Financial Advisory
 Brookfield Place, Tower 2, Level 7
 123 St Georges Terrace
 Perth WA 6000

Third cross-respondent

Name	David Orr
Address	c/- Deloitte Financial Advisory Brookfield Place, Tower 2, Level 7 123 St Georges Terrace Perth WA 6000