

**IN THE SUPREME COURT OF NEW SOUTH WALES
COURT OF APPEAL**

STEPHEN TAYLOR

Appellant

v

IAN WOODGATE

Respondent

PROCEEDINGS NUMBER: 2025/00127431

APPELLANT'S SUBMISSIONS IN REPLY

Introduction

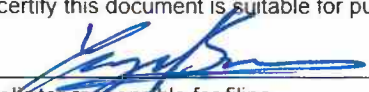
1. These submissions reply briefly to the respondent's written submissions dated 29 September 2025 (RS). The appellant's outline of submissions dated 31 August 2025 will be referred to as "AS".

Ground 1

2. As explained in AS [15]-[22], the gravamen of Ground 1 is that the reasoning in J[145] & J[151]-[154] shows that the primary judge misunderstood the evidence of the orthopaedic experts, Dr Doig and Dr O'Sullivan, as well as the evidence of the expert radiologist, Dr Thomson. This misunderstanding seems to arise from lack of precision in dealing with concepts that arose in the evidence, including: "[stem] looseness", "radiological looseness", "[stem] movement", the "actual position of the implant", and the implant "not shifting much".
3. RS [8]-[17] perpetuates this confusion. The respondent now appears to concede that there were radiological signs of loosening from August 2011 to 2017, which was the very point at AS [20].¹ Contrary to RS [20]-[21], that is the opposite of the primary judge's finding at J[145] and J[151].

¹ Also see RS [26].

I certify this document is suitable for publication pursuant to the Practice Note SC CA 01.


Solicitor responsible for filing

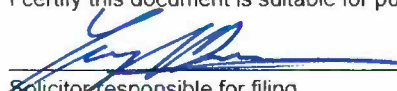
18/10/2025
Dated

4. RS [16]-[17] appears to misunderstand the evidence of the orthopaedic experts at Black 2:623-624. There, the orthopaedic experts explain that if there is movement of the stem inside the canal of the femur, then the stem is “definitely loose”. What they do not say, and it was not suggested to them, is that looseness of the stem is always (or even usually) demonstrated by movement that can be clearly seen by comparing successive x-rays of the canal of the femur. This was the point made in AS [20].
5. As to RS [23]-[25], the significance of radiological evidence of looseness, as part of the matrix of evidence going to the issue of looseness, was then addressed under Ground 2, in AS [28]-[51].
6. Finally, the point in RS [15] is unclear. Dr Thomson’s evidence was that both lateral and AP (anterior-posterior) views of the x-rays are necessary to detect movement that is medial-lateral: Blue 1:102.

Ground 2

7. As explained in AS [28], the gravamen of Ground 2 is that the primary judge’s finding – that there was no loosening of the femoral stem either at the revision surgery on 30 August 2011, or afterwards until 2017 – was infected by: (i) the incorrect finding at J[145] & J[151]-[154] that there was no radiological evidence of looseness; and (ii) failure to grapple with many other sources of evidence, as set out in AS [32]-[36] and AS [41]-[48].
8. RS [26]-[47] does not really engage with those two propositions.
9. As to the first proposition, RS [26] concedes that there were radiological signs of loosening, and RS [40] points that that this is not “determinative” of whether the stem was in fact loose. So much can be accepted. But the point is that having wrongly concluded that the stem was not radiologically loose, the primary judge did not then have to take radiological looseness into account in weighing up all the other evidence on the issue, including on questions of reliability and credit of witnesses.
10. As to the second proposition, whilst RS [26]-[47] reiterates the respondent’s submissions below as to the other sources of evidence raised in AS [32]-[36] and AS [41]-[48], the problem is that none of that reasoning appears in the judgment. Nor does RS [40]-[46] grapple with the central point in AS [41]-[48], which is that even if all of the respondent’s clinical notes are accepted as accurate, they do not provide enough detail to enable precise findings as to the appellant’s function and activity over the period 30 August 2011 to 30 August 2017 sufficient

I certify this document is suitable for publication pursuant to the Practice Note SC CA 01.


Solicitor responsible for filing

18/10/2025
Dated

to determine whether that function and activity is inconsistent with the stem being “clinically loose”.

Grounds 3 & 5

11. The appellant relies on AS [52]-[56] and AS [57]-[62] (which should correctly fall under Grounds 3 and 5 respectively, instead of 3 and 4).

Grounds 4 & 6

12. The point in RS [56]-[63] seems to be that, although J[158]-[159] does not cite any of the evidence or submissions now repeated by the respondent in RS [56]-[63], one should assume that the primary judge accepted them all and rejected all of the contrary evidence relied upon by the appellant below. That is a stretch.
13. RS [65]-[67] then repeats the primary judge’s erroneous conclusion in J[158] that the appellant continuing “to experience broadly similar problems with his left hip after the 2019 surgery”, without citing any evidence in support.
14. RS [68] seems to miss the point of the appellant’s causation case. Those two references in the Ryan and Negus reports (Blue 1:69R-T and Blue 1:48W) show that the appellant’s symptoms improved after the 2019 revision surgery, but some symptoms persisted. The appellant’s causation case was and remains that delay in having that revision surgery resulted in permanent symptoms that he would have avoided from earlier revision surgery.



Hilbert Chiu
Tenth Floor Chambers
T (02) 9232 4609
chiu@tenthfloor.org



Katharine Young
Sir Anthony Mason Chambers
T (02) 9373 7447
kyoung@siranthonymason.com.au

7 October 2025

I certify this document is suitable for publication pursuant to the Practice Note SC CA 01.	
 Solicitor responsible for filing	<u>10/10/2025</u> Dated