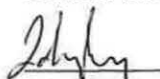


I, Zahra Panju, solicitor for the Appellant, hereby certify this and the following 3 pages are a true and correct copy of the Appellant's written submissions for publication on the Supreme Court of New South Wales website pursuant to paragraph 27 of Practice Note SC CA 1.

Dated: 31 October 2025


Zahra Panju



Filed: 24 October 2025 7:45 AM



D00028YVTK

Written Submissions

COURT DETAILS

Court	Supreme Court of New South Wales, Court of Appeal
List	Court of Appeal
Registry	Supreme Court Sydney
Case number	2025/00150256

TITLE OF PROCEEDINGS

First Appellant	Troy Townsend
First Respondent	CPB CONTRACTORS PTY LIMITED ABN 98000893667

FILING DETAILS

Filed for	Troy Townsend, Appellant 1
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Legal representative	armando john gardiman
Legal representative reference	
Telephone	02 8833 2500
Your reference	ZP 278640

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.

Written Submissions (Townsend Troy v CPB Contractors written submissions Court of Appeal in reply 21.10.2025.pdf)

[attach.]

Troy Townsend

V

CPB Contractors Pty Ltd

Appellant's Submissions in Reply

1. Contrary to the Defendant's submissions the evidence does not establish that the Appellant had no time off work following the original injury to his right hip on 21 January 2020. Rather the evidence is silent on the matter.
2. The Appellant said that the workers compensation claim was accepted, however the claim was closed after seeing the insurance doctor Dr Con Glezos. He said I would have to live with it. He certified the Appellant as fit for pre-injury duties. Thereafter the Appellant continued to work despite the pain and disability.¹
3. The Icare document of 29 September 2021 commences "I understand that you have successfully achieved your return to work and recovery goals following your injury"²
4. It is accepted that the Appellant was working when he saw Dr Glezos on 4 May 2021.
5. Similarly the evidence is silent on whether the Appellant had time off between January 2020 and September 2023 during which the Appellant was performing the lighter work of occupational first aid officer.
6. It is accepted that for the purposes of a claim for weekly compensation the relevant incapacity is one that results in economic loss. That means a loss during the period of the claim and not some other period.
7. With respect to ground one the Defendant repeats the error made by the Member and the Acting Deputy President.³ The question for the Member and the Acting Deputy President was whether there was incapacity in the period of from 3 November to the date of hearing. That question is not answered by a decision as to whether there was

¹ CB pg 6 E-I

² CB pg 11 J

³ Defendant submissions par 18

incapacity in September 2023 and then asking whether there has been any change. The question is whether there was any incapacity within the period of the claim.

8. In any event neither the Member nor the Acting Deputy President engaged in any consideration of the question of whether there had been any change in the period following September 2023. Such an enquiry would have involved a consideration of the opinions of Dr Herald with regard to the restrictions as a result of the injury present at the time of his examination. It is then necessary to consider whether those restrictions mean that there was an incapacity to perform the pre-injury work of a construction worker.
9. This failure involved an error of law in that the neither the Member nor the Acting Deputy President considered the correct question in law.
10. The Acting Deputy President also failed to engage with the Appellant's submission that the failure to consider the question of incapacity at the later time was an error by the Member. An examination of the reasoning of the Acting Deputy President discloses that this submission was totally ignored when the Acting Deputy President engaged in his reasoning process.
11. The Defendant's submission also fails to acknowledge that there is a critical difference between the Appellant working his pre-injury duties at the time he resigned and working his ordinary duties which were lighter than his pre-injury duties. The test for economic loss resulting in an entitlement to weekly compensation commences with the question of whether the Appellant was fit to perform his pre-injury duties.
12. The Appellant had squarely raised the issue that there had been no consideration of whether the Appellant could perform his pre-injury duties and that submission was not addressed by the Acting Deputy President.
13. Equally it does not answer the question of whether the Appellant was fit to perform his pre-injury duties in November 2023 by observing that in May 2021 the Appellant was certified fit to perform his pre-injury duties as tolerated. The addition of the words "as tolerated" disclose a restriction. This should have been couple with the evidence of the Appellant that he had deteriorated in the meantime. In any event the Member did not consider that evidence.
14. The Defendant's submissions in respect of Ground 2 are dependant upon the view that incapacity can only be found if a doctor says there is incapacity. This is not correct. The doctors give opinions in respect of the medical condition and whether it involves restrictions on the Appellant's ability to perform certain tasks. It was for the Member

to then consider those restrictions together with the evidence of what is required to perform the types of work for which the Appellant was otherwise qualified to do.

15. The Member and the Acting Deputy President did not carry out that task. Dr Herald had described his clinical findings demonstrating restrictions in the hip and concluded that the Appellant had advanced osteoarthritis in the right hip.⁴ The Appellant described his symptoms and restrictions consistent with that diagnosis.⁵
16. The correct approach for the Member was to consider that evidence together with the evidence of the Appellant's pre-injury duties to determine whether there was an incapacity at any time after November 2023. Neither performed that task.
17. A consideration of those matters would have led to a conclusion that there was a loss of earning capacity consistent with the opinion of Dr Mechreky that the Appellant had no current work capacity.



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⁴ CB 102-103

⁵ CB 6