

WORKERS COMPENSATION COMMISSION

CERTIFICATE OF DETERMINATION

Issued in accordance with section 294 of the *Workplace Injury Management and Workers Compensation Act 1998*

Matter Number: 5498/19
Applicant: Farooq Aslam
First Respondent: Ramesh Tanwar
Second Respondent: Tanwar Enterprises Pty Ltd
Third Respondent: Workers Compensation Nominal Insurer
Fourth Respondent: Abdul Hameed Ghazi
Date of Determination: 11 January 2021
Citation No: [2021] NSWCC 13

The Commission declares:

1. That the first respondent was not insured as required by the *Workers Compensation Act 1987* at all relevant times.

The Commission determines:

1. That the third respondent, the Workers Compensation Nominal Insurer, is liable to make payments as if it were the insurer of the first respondent at all relevant times.
2. Award in favour of the second respondent.
3. Award in favour of the fourth respondent.
4. Award for the first respondent and third respondent in respect of the claim for injury to the lumbar spine.
5. Matter to be remitted to the Registrar to refer to an Approved Medical Specialist for:
 - (a) assessment of whole person impairment of the cervical spine and right lower extremity (knee) attributable to the injury on 21 October 2006, and
 - (b) assessment of whole person impairment of a psychological condition attributable to the injury on 21 October 2006.
6. Matter to be listed for further telephone conference in relation to the claim for weekly benefits and medical expenses following the issue of the Medical Assessment Certificates.

A statement is attached setting out the Commission's reasons for the determination.

Carolyn Rimmer
Arbitrator

I CERTIFY THAT THIS PAGE AND THE FOLLOWING PAGES IS A TRUE AND ACCURATE RECORD OF THE CERTIFICATE OF DETERMINATION AND REASONS FOR DECISION OF CAROLYN RIMMER, ARBITRATOR, WORKERS COMPENSATION COMMISSION.

A Reynolds

Antony Reynolds
Senior Dispute Services Officer
As delegate of the Registrar



STATEMENT OF REASONS

BACKGROUND

1. On 22 October 2019, the applicant, Farooq Aslam (Mr Aslam) lodged an Application to Resolve a Dispute (the Application) in the Workers Compensation Commission (the Commission). The applicant commenced the proceedings against Ramesh Tanwar (Mr Tanwar), Tanwar Enterprises Pty Ltd (Tanwar Enterprises) and the Workers Compensation Nominal Insurer (the Nominal Insurer). The fourth respondent, Abdul Hameed Ghazi (Mr Ghazi) was joined as party by Mr Tanwar and the second respondent following the telephone conference on 19 November 2019.
2. Mr Aslam claimed weekly benefits and lump sum compensation.
3. Mr Aslam claimed that he has sustained an injury to his left eye, teeth, neck, back, shoulders and right leg, and psychological injury, on 21 October 2006.
4. There was no dispute that Mr Aslam was driving a taxi registration number T 1708 on 21 October 2006 when he was assaulted by two passengers in the taxi.
5. There was no dispute that Mr Tanwar was the registered owner of Taxi T 1708 as at 21 October 2006.
6. Mr Tanwar, Tanwar Enterprises and Mr Ghazi were not insured under the *Workers Compensation Act 1987* (the 1987 Act) at the time of the applicant's injury.
7. The Nominal Insurer issued a s 74 Notice dated 10 August 2017 disputing liability for the claim for weekly payments, medical expenses and lump sum compensation. The notice disputed injury to the lumbar spine, right knee and right leg, or psychological injury (primary or secondary), resulting from the incident on 21 October 2006, when Mr Aslam alleged he was employed by Mr Tanwar.

ISSUES FOR DETERMINATION

8. The parties agree that the following issues remain in dispute:
 - (a) Whether Mr Tanwar, Tanwar Enterprises or Mr Ghazi bailed taxi T1708 to Mr Aslam on the night shift from 20 October 2006 to 21 October 2006 (Schedule 1, CI 10 of the *Workplace Injury Management and Workers Compensation Act 1998* (the 1998 Act)).
 - (b) Did Mr Aslam sustain an injury to his lumbar spine, right leg (knee) or psychological injury in the assault on 21 October 2006 (s 4 of the 1987 Act)?
 - (c) Was deemed employment under CI 10 of Schedule 1 of the 1998 Act with either the Mr Tanwar, Tanwar Enterprises or Mr Ghazi a substantial contributing factor to any injury to his lumbar spine, right leg, right knee or psychological injury in the assault on 21 October 2006 (s 9A of the 1987 Act)?
 - (d) Whether Mr Aslam has any incapacity as a result of the injury on 21 October 2006 and if so, the extent of such incapacity and his weekly entitlements.
 - (e) Whether medical expenses were reasonably necessary.
 - (f) Degree of whole person impairment.

PROCEDURE BEFORE THE COMMISSION

9. As noted above, proceedings were commenced in the Commission on 22 October 2019. The matter was listed for a telephone conference on 19 November 2019. On 19 November 2019, Mr Tanwar and Tanwar Enterprises were given leave to join Mr Ghazi as a party pursuant to Rule 11.1(4) of the Workers Compensation Commission Rules 2011(the Rules). The first and second respondents were directed to serve on Mr Ghazi:
 - (a) a notice that advises Mr Ghazi of the joinder and of the time within which he must lodge and serve a reply 14 days after the date of service of the notice, and
 - (b) a copy of any document lodged to commence the proceedings, any document lodged in answer to that document or to any other document lodged in the proceedings, and any information or document required to be lodged and served with any such document.
10. A second telephone conference was scheduled on 30 January 2020. However, on 30 January 2020, Mr Ghazi, could not be joined to the telephone conference because the Notice to Join had not been correctly uploaded in the Commission's system. Mr Tanwar and Tanwar Enterprises were directed to file any late documents by 21 February 2020 and Mr Ghazi was directed to file a Reply by 21 February 2020.
11. A third telephone conference was held on 9 March 2020. Mr Ghazi was ordered to file a Reply by 7 April 2020 and the matter was listed for a conciliation conference and arbitration on 24 April 2020. On 22 April 2020 Mr Tanwar and Tanwar Enterprises applied to have the hearing date on 24 April 2020 vacated. That application was heard at the hearing on 24 April 2020 when Mr Tanwar and Tanwar Enterprises were directed to file any evidence in reply to the evidence filed by Mr Ghazi by 8 May 2020. The matter was listed for a further conciliation conference and arbitration on 15 May 2020. The hearing date on 15 May 2020 was vacated because of the new protocols introduced by the Commission during the coronavirus pandemic.
12. The matter was listed for conciliation and arbitration on 15 October 2020 through video platform, Modron Spaces.
13. Mr Frank Curran, who was instructed by Mr Hansen of Carters Law Firm, appeared for Mr Aslam. Mr Andrew Campbell, who was instructed by Mr Simons of Remington & Co Solicitors, appeared for Mr Tanwar and Tanwar Enterprises. Mr David Saul, who was instructed by Mr Tim Ainsworth of HWL Ebsworths appeared for the Nominal Insurer. Mr Ghazi appeared in person. On 15 October 2020 the matter was part-heard and listed for further arbitration on 2 December 2020. On 2 December 2020, Mr Curran, who was instructed by Mr Hansen of Carters Law Firm, appeared for Mr Aslam, Mr Campbell, who was instructed by Mr Simons of Remington & Co Solicitors appeared for Mr Tanwar and Tanwar Enterprises and Mr Ainsworth of HWL Ebsworths appeared for the Nominal Insurer. Mr Ghazi appeared in person.
14. I am satisfied that the parties to the dispute understand the nature of the application and the legal implications of any assertion made in the information supplied. I have used my best endeavours in attempting to bring the parties to the dispute to a settlement acceptable to all of them. I am satisfied that the parties have had sufficient opportunity to explore settlement and that they have been unable to reach an agreed resolution of the dispute.

EVIDENCE

Documentary evidence

15. The following documents were in evidence before the Commission and taken into account in making this determination:
 - (a) Application to Resolve a Dispute (ARD) and attached documents;
 - (b) Reply of Mr Tanwar and Tanwar Enterprises dated 12 November 2019 (with no attached documents);
 - (c) Reply of the Nominal Insurer dated 12 November 2019 and attached documents;
 - (d) Reply of Mr Ghazi dated 20 April 2020 and attached documents;
 - (e) undated statement of the Mr Tanwar (21 paragraphs) and attached annexures A-A1 (127 pages) filed on 21 February 2020. For convenience this will be referred to as the “127 page statement”;
 - (f) Application to Admit Late Documents (AALD) filed by Mr Aslam and dated 27 October 2020, and
 - (g) AALD filed by Mr Tanwar and Tanwar Enterprises and dated 23 October 2020.
16. Mr Tanwar and Tanwar Enterprises had in fact filed two separate documents on 21 February 2020. These documents were not attached to an AALD as required by Practice Direction No 9. The first document was a statement by the first respondent dated 21 February 2020 which attached Annexures A-J (This will be referred to as the 37 page statement). The second was the statement and annexures referred to in 15(e) above, that is, the “127 page statement”.
17. Mr Tanwar and Tanwar Enterprises filed five separate documents on 8 May 2020. Again, these documents were not attached to an AARD as required by Practice Direction No 9. The first was a statement by Mrs Shirley Anne Tanwar dated 22 April 2020. The second was a statement by Mr Abhay Tanwar dated 22 April 2020. The third was a statement by Ms Kaur dated 22 April 2020. The fourth was a statement of Mr Tanwar dated 8 May 2020 (11 paragraphs) and annexing a letter from Carter’s Law Firm dated 10 September 2007. The fifth was a statement of Mr Tanwar dated 8 May 2020 (35 paragraphs), and attaching annexures A-C.
18. During the hearing on 15 October 2020, it became obvious that a number of statements and annexures filed by Mr Tanwar and Tanwar Enterprises had not been served on all the parties. Mr Campbell properly conceded that a number of statements and annexures filed by Mr Tanwar and Tanwar Enterprises had not been served on all the parties. Mr Campbell stated that his instructing solicitor was not familiar with practices in the WCC and had assumed that the Commission served documents on the parties once they were lodged.
19. Mr Curran and Mr Saul submitted that any documents not served on a party should not be admitted and the matter should proceed on the basis that only the 127- page statement be admitted. Mr Ghazi stated that he had not been served with any of the documents filed by Mr Tanwar and Tanwar Enterprises but consented to the matter proceeding.

20. The Rules and Practice Directions No 3 and No 9 make it clear that evidence needs to be both filed and served by the parties. Rule 10.3 provides:
- “(1) For the purpose of section 290 of the 1998 Act, a party to proceedings must lodge and serve, with the dispute application or reply, all information and documents on which the party proposes to rely and that are in the possession and control of that party, and that have not been lodged by a party in the current proceedings and-
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- (2) Subject to subrules (3)-(4), a party may not introduce evidence that has not been lodged and served as required by subrule(1) or has not been provided to any other party as required by the 1998 Act or any Regulation or Workers Compensation Guideline made under that Act.”
21. The Reply filed by Mr Tanwar and Tanwar Enterprises had no attachments. The documents filed after the Reply was filed were late documents.
22. Practice Direction No 9 – Applications to Admit Late Documents dated 30 October 2018 provides practical and procedural guidance regarding applications to admit late documents. Clause 7 provides that an application to admit late documents must be lodged by completing a Form 2C – Application to Admit Late Document. Clause 7 provides: “An application to admit late documents must be lodged with the Commission no later than five working days prior to a telephone conference, arbitration hearing or medical assessment and must be served on the parties as soon as practicable.” (emphasis added). Clause 8 provides: “The reasons for the lateness of the document and for its admission in the proceedings should be set out in the application.” Clause12 provides:
- “In determining an application for leave to admit late documents, the following matters will be considered: (a) the interests of justice; (b) the requirements of the workers compensation legislation and the 2011 Rules: (c) the submissions of the parties including the adequacy of the moving party’s reasons for the delay in lodging the documents; (e) the effect, if any, on the timely resolution of the dispute, and (f) the objectives of the Commission.”
23. In addition, a direction was issued on 12 October 2020 ordering parties to serve a copy of any documents that they sought to put to witnesses in cross-examination by 2.00 pm on 14 October 2020 and Mr Tanwar and Tanwar Enterprises failed to comply with that direction.
24. Section 290(3) of the 1998 Act provides that a document which is not provided in accordance with the Commission’s rules cannot be admitted in a dispute before the Commission. The Rules provide in rule 10.3(4):
- “(4) The Commission may, if it is satisfied that it is necessary to do so in the interests of justice, allow a party to introduce evidence that the party would otherwise be prevented from introducing because of the operation of subrule (2), provided the party complies with subrule (3) or the Commission gives the party leave to lodge additional documents.”

25. The use of “may” indicates that the Commission has a discretion about the admission of late evidence. Reasons must be always given in support of an application for the exercise of a discretion to extend time. In *Iovanescu v McDermott* [2004] NSWCA 106, Young CJ in Eq said:
- “16. I turn now to the explanation as to whether or not there was a proper explanation for delay. Counsel for the respondent argued that as there was no statutory requirement for an explanation, no explanation was required. That is not correct. It is always a question bearing upon the exercise of discretion in a claim for extension of time: *Salido v Nominal Defendant* (1993) 32 NSWLR 524 at 533, 539 and 554; *Holt v Wynter* [2000] NSWCA 143; (2000) 49 NSWLR 128 at 136. That is because it goes to the question of whether it is just and fair to grant the indulgence sought, namely an extension of time to apply to rescind the dismissal. It cannot just be a question of prejudice and ability to have a fair trial. If that were the position and everything else could be sorted out by appropriate costs orders then the accepted requirements for case management would go out the window. Hence the principles of case management assume that the parties will comply with rules or give proper reasons for failure to do so.”
26. In *Coles Myer Limited v Tabassum* [2005] NSWCCPD 16 Byron DP set out the following factors which might be taken into account when the Commission is considering the admission of late documents:
- “ - Whether there was an acceptable explanation for the delay;
 - Whether or not the refusal to admit the evidence will cause a substantial prejudice to the party making the application;
 - The prejudice, if any, that would result to the other party;
 - Whether or not the delay in filing the document was attributable to the legal representative and not the party personally;
 - The nature of the proceedings, including the nature of the relevant statutory scheme, general considerations of fairness and justice between the parties.”
27. All of the documents filed by Mr Tanwar and Tanwar Enterprises in these proceedings were late documents. It would appear that the solicitor for Mr Tanwar and Tanwar Enterprises did not familiarise himself with the Rules and Practice Directions of the Commission and failed to ensure that the documents that Mr Tanwar and Tanwar Enterprises sought to rely on as evidence were served on other parties so that the matter could proceed without further delay. While his client is uninsured, such conduct is unacceptable and contrary to effective case management. If the documents that have not been served were admitted, this would cause significant delay in the proceedings. Such delay adversely impacts on the other parties. In obvious contrast, I note that Mr Ghazi was unrepresented but, apart from requiring an extension of time, managed to file and serve his reply with attached documents as required by the Rules.
28. The overall history of the various proceedings between Mr Aslam and Mr Tanwar needs to be considered. The injury occurred on 21 October 2006. It appears that Mr Tanwar was notified about a claim when he received a letter from Mr Aslam’s solicitor about a year after the assault on 21 October 2006. It was not clear whether proceedings were commenced in 2008.

29. Proceedings were commenced in 2012 (Matter No 4008-2012). Mr Tanwar (who was the second respondent in those proceedings) was directed by Arbitrator Wynyard to provide written particulars of all persons alleged to be managers and/or bailees of taxi registered number T 1078 as at 21 October 2006. In a Direction dated 26 October 2012, Arbitrator Wynyard confirmed that the hearing date set in the matter was 6 February 2013. The Arbitrator also noted: "Mr Vaster [sic], for the second respondent indicated at the teleconference of 24 October 2012 that he would not be relying upon the defence of bailment and that therefore the documents the subject of order 1 in my Directions of 7 September 2012 have not been produced." On 28 January 2014, Arbitrator Ashford made the following orders that Mr Aslam discontinue the claim as against Respondents 2 and 3, that is, against Mr Tanwar and the WorkCover Authority of New South Wales. An order for weekly payments was made in favour Mr Aslam in respect of a claim relating to an injury in 2004 against Bilal Bros Technologies Pty Ltd.
30. Proceedings were also filed by Mr Aslam in 2018 (Matter No 1798/2018).
31. Proceedings were filed in 2019 (Matter Number 5498/19) against Mr Tanwar, Tanwar Enterprises and the Nominal Insurer.
32. On 15 October 2020, I ordered that the documents filed on 8 May 2020 were not to be admitted as they had not been served on all of the other parties. I ordered that the document referred to as the "37- page statement" filed on 21 February 2020 was not to be admitted as it had not been served on the other parties.
33. Mr Curran objected in the course of the hearing on 20 October 2020 to various parts of statements filed by Mr Tanwar and Tanwar Enterprises. I ruled on those objections on an ex-tempore basis. Paragraphs 7 to 9 of Ms Kaur's statement dated 18 February 2020 were excluded as they were based on hearsay, were not relevant to the issues to be determined and were not, in my view, of probative value.
34. Mr Curran also objected to some of the attachments to Mr Tanwar's 127 page statement and attachments H, K and I were excluded. These attachments included a Fraud Report Form sent to NSW Police by Ms Kaur, and a report sent to Australian Cyber Security Centre by Ms Kaur.
35. As noted above, the matter was part-heard on 15 October 2020 and adjourned to 2 December 2020. A direction was issued on 20 October 2020 ordering the parties to file and serve within 7 days any AALD that the party may seek to rely on in the hearing on 2 December 2020.
36. Mr Tanwar and Tanwar Enterprises lodged an AALD dated 23 October 2020.
37. Mr Aslam lodged an AALD dated 27 October 2020.
38. A direction was issued on 29 October 2020 ordering the parties to lodge and serve on the other parties by 9 November 2020 any objections to the late documents filed pursuant to the direction on 20 October 2020.
39. No objection was lodged in respect of the AALD dated 23 October 2020 filed by Mr Tanwar and Tanwar Enterprises. At the hearing on 2 December 2020 Mr Campbell advised that all of the evidence relied on by Mr Tanwar and Tanwar Enterprises was contained in the AALD dated 23 October 2020.
40. Mr Tanwar and Tanwar Enterprises lodged an objection to the documents filed by Mr Aslam attached to the AALD dated 27 October 2020.

41. Mr Tanwar and Tanwar Enterprises objected on the following grounds:
- (a) Mr Aslam's case has closed. This would involve Mr Aslam seeking leave to reopen his case.
 - (b) Mr Tanwar has completed his evidence and was not specifically cross examined on the material annexed.
 - (c) The material is mainly from earlier unrelated proceedings going back to 2007.
 - (d) Much of the material was not relevant to the current proceedings, for example Taxi Driver's Daily Worksheet stamped by Zakyntos Management.
 - (e) The pleadings have closed. Pleadings would need to be amended if this Application was granted.
 - (f) There is substantial prejudice to Mr Tanwar and Tanwar Enterprises if this Application was granted, not to mention further significant legal costs incurred (Mr Tanwar and Tanwar Enterprises have to bear their own costs of these proceedings).
42. Mr Tanwar and Tanwar Enterprises did not specifically refer to any of the documents attached to the AALD dated 27 October 2020.
43. The documents that Mr Aslam sought to rely on as late evidence were as follows:
- (a) letter from Sparke Helmore dated 24 April 2018;
 - (b) Notice for Production issued by Sparke Helmore;
 - (c) letter to Sparke Helmore from Carter's Law Firm dated 4 May 2018;
 - (d) Direction of Workers Compensation Commission in Matter No 1798-2018 dated 16 May 2018;
 - (e) page 16-17 of Workers Compensation Commission transcript in Matter No 1798/2018 dated 13 June 2018;
 - (f) ~~email~~-attaching Reply in Matter No 1798/2018 from Nicholas Vasta, Solicitor dated 5 June 2018;
 - (g) email from Nicholas Vasta & Co dated 19 May 2018;
 - (h) email-from Nicholas Vasta attaching statement of Ramesh Tanwar dated 18 June 2018;
 - (i) pages 7-12 of Workers Compensation Commission transcript in Matter No 1798/2018 dated 13 June 2018;
 - (j) letter dated 25 June 2018 from Carters Law Firm to Nicholas Vasta & Co attaching AALD dated 25 June 2018 attaching taxi driver daily worksheets;
 - (k) email from Remington & Co dated 04 July 2018;

- (l) email from Ramesh Tanwar dated 9 July 2018 attaching AALD attaching a statement of Ramesh Tanwar dated 26 June 2018;
- (m) letter dated 13 September 2019 from Carters Law Firm to Tanwar Enterprises Pty Ltd;
- (n) letter dated 30 September 2019 from Carters Law Firm to Remington & Co;
- (o) Taxi Drivers Daily worksheet stamped by Zakynthos Management dated 14 June 2007, and
- (p) Taxi Drivers Daily worksheet stamped by Zakynthos Management dated 15 June 2007.

44. A decision was given to the parties on the evidentiary objection on 12 November 2020.
45. I noted that some of the documents attached to the AALD dated 27 October 2020 had already been admitted as evidence in the proceedings, including the taxi driver daily worksheets attached to the AALD dated 25 June 2018. These taxi driver daily worksheets were attached to the ARD. The statement of Mr Tanwar dated 26 June 2018 was attached to the Reply filed by the Nominal Insurer. The letter dated 13 September 2019 from Carters Law Firm to Tanwar Enterprises Pty Ltd and the letter dated 30 September 2019 from Carters Law Firm to Remington & Co were attached to the AALD dated 23 October 2020 filed by Mr Tanwar and Tanwar Enterprises. No objection can be taken to these documents.
46. All the documents, with the exception of the two taxi driver daily worksheets stamped by Zakynthos Management dated 14 June 2007 and 15 June 2007, were documents relating to earlier proceedings between Mr Aslam and Mr Tanwar. Mr Tanwar was the sole director of Tanwar Enterprises at the time of Mr Aslam's injury on 21 October 2006 and as a party in the earlier proceedings was aware of the content of these documents. I was not satisfied that the admission of documents (a)-(i) and (j)-(k) caused Mr Tanwar and Tanwar Enterprises any prejudice. Nor was I persuaded that the admission of this material will impact to any significant degree on the timely resolution of this matter.
47. The two taxi driver daily worksheets stamped by Zakynthos Management dated 14 June 2007 and 15 June 2007 appeared to have been filed in reply to some of the evidence that has been filed by Mr Tanwar and Tanwar Enterprises in the AALD dated 23 October 2020. Mr Tanwar and Tanwar Enterprises were relying on a number of statements from witnesses such as Milad Saghapi and Say Tong Lim. These witnesses stated that they had never seen a company stamp on a daily worksheet when working for Tanwar Enterprises and that in their experience with other operators "not one of them used a stamp".
48. The failure of Mr Tanwar and Tanwar Enterprises to serve the evidence they wished to rely on in a timely manner has caused considerable delay in this matter. It was only proper given general considerations of fairness and justice between the parties, that Mr Aslam should have an opportunity to file evidence in reply.
49. I should add that given the history of this matter and, in particular, the number of proceedings commenced between Mr Aslam and Mr Tanwar in the Commission, it is most important that this matter be determined. Mr Tanwar's actions in abandoning a defence of bailment in earlier proceedings and then relying on that defence again in later proceedings resulted in undesirable and significant delays for Mr Aslam in having his claim determined.
50. Mr Tanwar and Tanwar Enterprises have argued that Mr Aslam's case has closed. I see no problem with Mr Aslam re-opening his case particularly given the late evidence filed by Mr Tanwar and Tanwar Enterprises in the AALD dated 23 October 2020. Although Mr Tanwar has completed his evidence, Mr Curran, counsel for Mr Aslam, was careful to reserve the right to further cross-examine Mr Tanwar on any further material introduced in the Commission.

51. The fact that some of the material goes back to earlier proceedings between Mr Aslam and Mr Tanwar was not a basis for excluding these documents. Further, I do not consider that the material was not relevant to the current proceedings.
52. The only documents that could be argued to be not relevant to the current proceedings, are the two taxi driver daily worksheets stamped by Zakyntos Management. However, as noted above these documents addressed some issues raised by witnesses for Mr Tanwar and Tanwar Enterprises.
53. Mr Tanwar and Tanwar Enterprises submitted that that the pleadings have closed and pleadings would need to be amended if this application was granted. No indication of how the pleadings would need to be amended was provided. The Commission is not a court of strict pleading (*Ford v Zinc Corporation and Ors* (1999) NSWCC 11 at [137]-[139]; *Quarmby v Motor Traders Association of NSW Group Apprenticeship Scheme* (20050 NSWCCPD 43 at [33]; *Bond Industries Ltd v Borg* (2007) NSWCCPD 80 at [62]). Section 354(1) of the 1998 Act provides that: "Proceedings in any matter before the Commission are to be conducted with as little formality and technicality as the proper consideration of the case permits."
54. Finally, Mr Tanwar and Tanwar Enterprises argued that there would be substantial prejudice if this application was granted, not to mention further significant legal costs incurred. The prejudice was not identified and there was at this stage sufficient time before the hearing on 2 December 2020 for the legal representatives for Mr Tanwar and Tanwar Enterprises to prepare their case on the basis that this material is admitted into evidence. This matter, given its long history, needs to be determined.
55. Mr Tanwar and Tanwar Enterprises were uninsured and will incur legal costs. However, I am not persuaded that this is a factor deserving any real weight in deciding this objection given the history of the matter and the failure of Mr Tanwar and Tanwar Enterprises to file and serve the evidence on which they rely in a timely manner and in accordance with the Rules.
56. I was not persuaded that there was any substantial prejudice identified by Mr Tanwar and Tanwar Enterprises if the documents attached to the AALD dated 27 October 2020 were admitted. The material filed with the AALD dated 27 October 2020 has a material bearing on the merits of the dispute. On balance, I concluded that it was in the interests of justice to admit the late evidence filed by the applicant on 27 October 2020.
57. The orders made on 15 October 2020 rejecting the admission of the documents filed on 8 May 2020 and the "37- page statement" filed on 21 February 2020 by Mr Tanwar and Tanwar Enterprises were based on considerations of procedural noncompliance and prejudice of the other parties. However, the adjournment of this matter and the renewed ability of other parties to obtain and file statements in response overcame any potential prejudice. The outcome was that the reasoning behind the orders made on 15 October 2020 was no longer relevant.

Oral evidence

58. Mr Aslam gave evidence on 15 October 2020.
59. Mr Tanwar gave evidence on 15 October 2020 and on 2 December 2020.
60. Mr Ghazi gave evidence on 2 December 2020.
61. Relevant parts of the oral evidence are referred to in my findings and reasons.

FINDINGS AND REASONS

Evidence of the applicant, Farooq Aslam

62. In a statement dated 10 April 2008, Mr Aslam stated that he had been employed as a taxi driver with Combined Taxis for about two and a half years. He stated that he had worked for more than one employer, the main employer being Mr Tanwar who was an owner with the Combined Taxis group.
63. Mr Aslam stated that he first commenced driving taxi cabs in November 2005 and worked for Mr Tanwar from the start. He wrote:
- “My arrangements with Mr Tanwar were that I could work 5 days in the evening from 3.00pm to 3.00am. At the commencement of each shift I would pick up the taxi from his home at 4 Charlotte Grove, Bella Vista, or from the base at the BP gas pump in Silverwater Road, Silverwater.”
64. Mr Aslam stated that when he first started working for Mr Tanwar the arrangement was that he would rent the taxi from him at a cost of \$135 per shift. He said that the money had to be paid at the completion of the shift and any money he earned on top of the \$135 was his money. He stated that Mr Tanwar supplied him with a uniform which he had to keep and look after.
65. Mr Aslam wrote:
- “I believe I was working for this man and I was paying him the shift changes. I was told after I started working for him that some owners keep information about insurance in the dashboard box. He never kept this information. ... I thought I was insured by him. I have since found out that this was not right.”
66. Mr Aslam stated that when he started work in November 2005, he worked for Mr Tanwar for 1 month and 20 days. He then worked for another owner but also continued to do work for Mr Tanwar. He said that he then worked for another person, Mr Kapish, at Premier Cabs for less than one month. Mr Aslam stated that after that he went back and worked for Mr Tanwar under the same arrangement, that in about June or July 2006. He said that Mr Tanwar supplied him again with a new uniform but changed the money arrangements so that he paid different amounts for different days. Mr Aslam stated he paid \$110 for Monday, \$120 for Tuesday, \$140 for Wednesday, \$160 for Thursday and \$180 for Friday. Mr Aslam said that insurance was not discussed and it was his responsibility to pay his tax. He stated he did not sign any paperwork and it was a verbal agreement.
67. Mr Aslam stated that on 21 October 2006 he commenced his shift as normal, driving taxi T-1078 which was owned by Mr Tanwar. He stated that during the shift he was assaulted by two persons and injured. He stated that after the persons fled from the taxi, he chased them and with the assistance of other people and the police the assailants were arrested. He said that while he was holding the male offender, the man kicked him in the knee and hit his stomach. Mr Aslam stated following this incident he was taken by ambulance to Sydney Hospital where he was admitted and stayed for one and a half days. Mr Aslam stated that because of his injuries he could not go back to work until 7 November 2006 and then was able to work full time for 10 shifts until his knee became too painful to work. Mr Aslam said that he received medical treatment for his knee from Dr Haddad and Dr Mahoney.
68. Mr Aslam stated he did not work in the early part of 2007 because of his knee injury but travelled overseas from 31 January 2007 for a period of 20 days. He said that on his return he was unable to work because of his knee injury and did not work for anybody until 14 June 2007 when he returned and worked for another taxi owner. He said on that occasion he worked 35 shifts, the last shift being 1 September 2007.

69. Mr Aslam said that after these shifts, he started work for Lime Taxis and worked five to six shifts per week, for a period of 1 month and 10 days. Mr Aslam stated that he then started to work for a Mr Papadatis again and was currently working for him under the same arrangements. Mr Aslam stated that he had received a previous injury to his knee but it was on the other side, not on the right side. He said that he was still suffering with the new injury to his knee. He said that after the injury he found that he could not work five days a week and that was why he did not work full time.
70. In a statement dated 27 March 2012, Mr Aslam stated that he had commenced employment as a network administration warehouse manager with Bilal Brothers Pty Ltd on 18 April 2004. He stated that he sustained an injury to his right leg and knee when he was hit by a heavy box which fell from a forklift in June 2004. He said that following that accident he saw his GP, Dr Haddad, who referred him to a specialist, Dr Walker. He said that Dr Walker performed an arthroscopy on his right knee on 28 April 2006. He stated that as a result of the nature of his work, he aggravated the injury to his right leg and knee and eventually left his employment with Bilal Brothers in November 2005. Mr Aslam said that he had left Bilal Brothers because he obtained a taxi driver's licence and he commenced work as a taxi driver in November 2005.
71. Mr Aslam stated that since November 2005 he had worked on and off as a taxi driver for various employers. He said he had six months off work following the arthroscopy in April 2006 and also went overseas on a few occasions over the years due to family problems.
72. Mr Aslam said that after his time off work recovering from the arthroscopy, he recommenced work in October 2006 with Mr Tanwar. He said Mr Tanwar was the owner of several taxis and the director of Tanwar Enterprises. He said that he had previously worked for Mr Tanwar from December 2005 to January 2006 and when he recommenced work in October 2006 the arrangement between them continued as before. Mr Aslam said that he usually commenced his shift by collecting the taxi from Mr Tanwar's home or from the base at the BP Gas Pump in Silverwater Road, Silverwater. He said that when he collected the vehicle at the commencement of each shift, he usually spoke with Mr Tanwar. He said that he paid Mr Tanwar a set amount for each day of the week he worked and kept as remuneration the balance of the daily takings. He said he wore a Taxis Combined uniform which was given to him by Mr Tanwar at his home on the first day that he worked.
73. Mr Aslam stated that as a result of the assault on 21 October 2006 he continued to experience pain and discomfort in his neck, shoulders and back. He stated that he also experienced pain in his right knee which was distinct from the pain to the side of the knee which had been caused by the accident at Bilal Brothers Pty Ltd. He said that he had experienced constant headaches and dizziness and had poor concentration and memory loss. He stated that he suffered from anxiety and depression and was being treated by a psychiatrist, Dr Ishrat Ali who had prescribed antidepressants.
74. Mr Aslam said that despite his injuries he had tried to continue working and worked on and off over the years as a taxi driver but only for a few shifts at a time. He said his ability to work as a taxi driver was particularly limited by the injury to his right knee. He said he was also fearful of being assaulted again. He said he was currently not working and had not worked since 20 December 2011. He said he was currently in receipt of a disability support pension from Centrelink.
75. In a statement dated 11 September 2012, Mr Aslam stated that he attended the Workers Compensation Commission on 4 September 2012 when his application was adjourned. He stated that he was questioned in detail as to the histories and medical reports and he clarified some matters. Mr Aslam said that he came to Australia in March 2004 from Pakistan and commenced employment with Bilal Brothers Technologies Pty Ltd on 18 April 2004. He said that he sustained an injury whilst in the employ of Bilal Brothers when a box or crate fell off a pallet on a forklift and struck him directly on his right knee.

76. Mr Aslam stated that he was off work for a period of time but could not afford to see a doctor. He stated that over the weeks following the injury the pain and swelling slowly reduced. He said that after about eight weeks he was able to walk without a limp and the pain in his right knee was minimal and he returned to work. Mr Aslam said that by January 2005 his right knee pain had increased and he went to see Dr Haddad on 24 January 2005.
77. In respect of the statement made by Mr Tanwar dated 18 April 2008, Mr Aslam denied having any arrangement or agreement with any other individual or party relating to the driving of a taxi cab on or about 21 October 2006 other than with Mr Tanwar. Mr Aslam wrote:
- “I have never heard of a Mr Millard [sic] (described as a ‘bailee’) or anyone called Hazzi [sic] (described as a ‘manager’) on the 4th September 2012 by Mr Vasta. Moreover, I say that with respect to each shift in October 2006 and at all other times there would be a log or record completed containing details as to mileage and other matters and Ramesh Tanwar and I would sign off on the daily record and Ramesh Tanwar would keep the original and I would be given a copy.”
78. Mr Aslam stated that in the incident on 21 October 2006, he was in the driver seat with a male assailant beside him. He said that the male commenced to grapple with him and strike him and he struggled and contorted and twisted to try and avoid being hit as best he could. Mr Aslam stated that he was then struck very forcefully in the left eye from behind with what he now knew to be a stiletto heel of a shoe worn by the female passenger in the rear seat. He said that she struck him a number of times. He stated that when the first blow was delivered by her with the shoe, he raised his right knee in a sudden reflex action and his right kneecap struck the underside of the steering wheel column very forcefully. He said he experienced severe pain in the right knee and leg. Mr Aslam said that despite these symptoms, and in a state of shock, he was able to chase after his assailants in a limping run for about 50 m or so before they were apprehended by other people and handed over to the Police who were in a patrol car. Mr Aslam stated that he suffered “blows to his teeth, face and upper body and severe wrenches to his neck and back”.
79. Mr Aslam stated he continued to drive a taxi as best he could until 20 December 2011. Mr Aslam stated that he could not continue because of his right knee pain and restrictions and his state of mind and he stopped driving and had not worked since. He stated that he now walked with the use of a walking stick for support.
80. In a statement dated 26 August 2015, Mr Aslam stated that he referred to his previous statement dated 27 March 2012 and confirmed that he had not worked since 20 December 2011. He said that he continued to suffer from injuries sustained in the accident on 21 October 2006, namely, aggravation of his neck, shoulders and back pain, right knee, scarring on his face and significant scar on the right thigh. He stated that his left eye watered quite often and he continued to suffer from severe anxiety and depression. He said he continued to see Dr Ali and take antidepressants. Mr Aslam stated that he had seen doctors in Pakistan since the assault and saw a doctor in May 2015 in Pakistan.
81. In a statement dated 13 November 2018, Mr Aslam stated that he had read the statement of Mr Tanwar dated 26 June 2018 and denied the contents of that statement.
82. Mr Aslam wrote:
- “During the period I drove taxi registration number T-1078, I was fully aware the taxi I was driving was owned by Ramesh Tanwar. I had no dealings whatsoever with a person named Abdul Hameed Ghazi. I do not know who this person is.

All my dealings were with Ramesh Tanwar. Every week I saw Mr Tanwar and handed him the money I owed him for using his taxis. I usually saw him at the BP service station at Silverwater. On some occasions I attended Mr Tanwar's home at 4 Charlotte Grove, Bella Vista. On those occasions, I sometimes saw Mr Tanwar's wife.

When I paid Mr Tanwar his moneys each week, I often did so in the presence of Taseer Qasim, who also dealt with Ramesh Tanwar. From my conversation with Taseer at the time, it was clear to me that Taseer was aware that Ramesh was the owner of the taxi he drove and that Taseer always paid moneys direct to Ramesh Tanwar."

83. During cross-examination on 15 October 2020, Mr Aslam gave the following evidence at p 53:

"Q. All right. And just so that I understand your evidence, exactly where were you when you say you were struck at the knee?

A. Yes, pardon? I'm, I'm near the, I'm near the car, taxi.

Q. Were you outside the taxi?

A. Yes, because I catch, I try to catch one person and I catch by the, in hold by the neck but one second person hit on my knee and the woman attack from my back.

Q. The, just excuse me one moment, Mr Aslam, you say, I understand, in your evidence that you were outside the taxi when the woman attacked you, is that right?

A. Pardon?

Q. Do you say, is it your evidence that you were outside the taxi when the, when the female attacked you?

A. Female, no, one time hit me, female one time, one or two time hit in, in the, also in the car first then second time, second even is outside the car because I, I catch one person and hold the person then he tried to tackle the person then he hit on my leg, hit on my back, then I leave it because blood is coming from my eye."

84. Mr Aslam was also asked about what he did with the keys to the taxi and replied that he gave them to his wife and then Mr Tanwar came to his home, met with him and collected the keys.

85. Mr Aslam was also cross-examined about the taxi drivers daily worksheet dated 21 October 2006. Mr Aslam agreed that he had provided a copy of the worksheet to his solicitors as part of the evidence in the proceedings. Mr Aslam confirmed that he had filled in the odometer start as being 490987 at the beginning of the shift. It was put to Mr Aslam that the worksheet was a false document as the odometer reading was not reliable.

86. Mr Aslam gave the following evidence at p 62-63 at [30] to [15]:

"A. O.K. O.K. ..(not transcribable 1.53.16).. other one no reliable please give me the correct document otherwise you need, because as per rule taxi operator need to keep working over six years as per the rule of regulation of the Transport Act the taxi, the taxi operator need to keep the worksheet for six years. Where is the regular worksheet otherwise - - -

Q. - - - we're not - - -

A. - - - the taxi operator need to provide the worksheet original - - -

Q. - - - and - - -

A. - - - because he have, he, the, Ramesh, Ramesh take it from me from my home. He take this worksheet with the car. I remember.

Q. Mr Aslam the odometer reading at the time that you put it into this document is incorrect.

A. Well I told you what reading on the car I write it.”

Evidence of Taseer Qasim

87. In a statement dated 24 April 2018, Taseer Qasim stated that he was currently employed as a part time taxi driver and part time journalist. He said that in about 2005 and 2006 he worked as a taxi driver during the day. He wrote:

“I drove taxi registration number T-1078 which was owned by Ramesh Tanwar.

I recall that for a period in or about 2005/2006 Farooq Aslam worked as a taxi driver and also drove taxi registration number T-1078 which was owned by Ramesh Tanwar. Farooq drove the taxi during the night and I drove the taxi during the day.”

88. In a statement dated 22 November 2018, Taseer Qasim stated that in about 2005 and 2006, he worked as a taxi driver driving taxi registration number T-1078 which was owned by Ramesh Tanwar. He stated that during the period, all his dealings regarding the taxi were with Ramesh Tanwar who he knew to be the owner of the taxi he drove. Mr Qasim wrote:

“2. Changeovers for the taxi drivers usually occurred at the BP service station at Silverwater. When I attended the service station I often saw Ramesh Tanwar. Once a week I would hand to Ramesh Tanwar the money I owed him for using his taxi.

3. I am aware that another person named Hameed Ghazi attended the BP service station at Silverwater from time to time. Hameed is a person who is known to me, who I sometimes saw at the service station. I confirm that Hameed did not have anything to do with me or the taxi I drove. All my dealings and financial transactions were with Ramesh Tanwar.

4. During the period when Farooq Aslam also drove taxi registration number T-1078, I saw Farooq on many occasions speaking with Ramesh Tanwar. I am aware that Farooq paid money to Ramesh Tanwar each week. Often Farooq and I attended the BP service station together and we paid Ramesh Tanwar at the same time.

5. I do not recall ever seeing Farooq Aslam speaking with Hameed Ghazi. Like me, Farooq had no reason to speak to Hameed as the taxi Farooq drove was owned by Ramesh Tanwar and all our dealings were with Ramesh.”

Evidence of the first respondent, Ramesh Tanwar

89. In a statement dated 18 June 2018, Mr Tanwar stated that he was the sole director of Tanwar Enterprises. He said that he owned a number of taxis in 2005 and 2006. Mr Tanwar stated that before 2005, he owned and operated three taxis and then in November 2005, he purchased a number of taxis. He said that during this period he was having some family issues and had other commitments and due to these reasons leased the taxi T-1078 to Mr Ghazi, the fourth respondent.
90. Mr Tanwar wrote:
- “4. After that Mr Hameed Ghazi on his own discretion, hired taxi drivers for T-1078 for any or all shifts and negotiated the pay-ins and also collected the pay-ins from the drivers.
 5. I am aware that on the 21 October 2006, T-1078 was hired by Farooq Aslam and that any arrangement he had for the shift was with Hameed and not with me. When Farooq was driving T-1078 in 2006, I never at any stage made any bailment or bailed any taxi to him. I also never collected any Pay-ins from Farooq nor did he have any discussion with me regarding shifts and Pay-ins. I did not meet Farooq when he came to drive for Hameed in 2006.
 - ...
 7. When Farooq returned to drive taxis in November 2006, as before all the bailment arrangements were made by him with Mr Hameed Ghazi and not with me.”
91. In a statement dated 26 June 2018, Mr Tanwar stated that he met Mr Ghazi around 2005. He stated that Mr Ghazi used to own and operate a number of taxis but due to personal reasons Mr Ghazi wished to sell his taxis but continue to operate them.
92. Mr Tanwar stated that he wished to purchase the taxis but did not wish to engage in bailment and therefore:
- “I purchased the taxis from Hameed in end of 2005, but he would continue to operate/bail them.
- Although I became the registered owner, but nothing had changed, eg he continued to bail the taxis, he had more or less the same taxi drivers continue to work with him as before, taxi drivers paid the Pay-In to him, he negotiated and made Pay-In arrangements with all old or new taxi drivers, organised the taxi drivers’ shifts for different taxis and continued to do changeovers for taxis at the BP service station at Silverwater, provide taxi stationery to drivers, i.e. driver worksheets, visiting card and EFTPOS paper rolls etc, collect the Pay-Ins and driver worksheets from drivers, organise maintenance for the taxis, use the same mechanic as before, organise the quarterly taxi inspections from the same authorised taxi inspection station as before, etc.”
93. Mr Tanwar stated that during the same period Mr Ghazi was also operating as a bailor for other taxi owners from the BP service station in Silverwater. He stated that during this period if any taxi driver worked for Mr Ghazi, they would not be aware who owned the taxi they were driving and would assume that Mr Ghazi was the owner and operator. Mr Tanwar stated that during this period any old drivers and especially any new taxi drivers who started working from the BP service station at Silverwater would only deal with Mr Ghazi and no-one else and they would make all bailment arrangements with Mr Ghazi.

94. Mr Tanwar wrote:

- “7. I was led to believe that Farooq Aslam started to drive a taxi with Hameed from BP Silverwater in about October 2006. At that time any or all bailment arrangement was made between Farooq and Hameed and not with me. I also believe at that time, Farooq was not aware that the taxi he had bailed from Hameed was owned by me. The only link Farooq had with me was that the taxi he drove was owned by me. All changeovers Farooq had for any taxi he drove at that time was with Hameed at BP service station at Silverwater.
8. Farooq has never given any worksheet or Pay-Ins to me and did not contact me during his bailment in the 2006 period.
9. I am now aware that on 20 October 2006 Hameed bailed T-1078 to Farooq Aslam. However I did not know about the incident until I received a letter from Farooq’s solicitor after about 1 year.
10. Farooq never contacted me on the date of the incident or thereafter.”

95. In an undated statement (the 127 page statement), Mr Tanwar stated he was a company director for Tanwar Enterprises. He stated that on 19 August 2019 Tanwar Enterprises received a letter from Carters Law Firm dated 31 July 2019 and replied to this on 20 August 2019. He referred to correspondence between Tanwar Enterprises and Carters Law Firm in August 2019 and on 13 September 2019. He stated that a complaint had been made to the Commissioner for Police in relation to fraud. He attached assorted statements of Charlie Kazi, Brian Carrabine, Abdul Bary, Milad Sagaphi, Zahoor Arshad, Van Hoi Diah, Say Tong Lum, Lars Johan Sunberg, Quazi Islam, Gurpreet Kaur and Alfio Santangelo.

96. Mr Tanwar stated that Burwood Petroleum was an authorised taxi inspection station. He stated that the taxi inspection report from Burwood Petroleum in respect of vehicle registration number T-1078 carried out on 17 July 2006 showed an odometer reading of 221306. The VIN number of the vehicle was 6FPAAAJGSW1858963. He stated that these details were taken directly from the vehicle on the day of inspection.

97. Mr Tanwar referred to a taxi inspection report from Burwood Petroleum in respect of vehicle registration number T-1078 carried out on 6 March 2007. He stated the inspection report showed the odometer was 310391 and the VIN number was 6FPAAAJGSW1858963.

98. In a statement dated 21 February 2020, Mr Tanwar stated that he met Mr Ghazi in around 2005. He said that Mr Ghazi used to own and operate a number of taxis and wanted to sell his taxis but continue to operate them. Mr Tanwar said that he wanted to purchase the taxis but did not wish to “bail the taxis” and therefore purchased them from Mr Ghazi at the end of 2005 with him to continue to operate or bail them.

99. Mr Tanwar stated that although he became the registered owner, nothing had changed in the day to day running of the taxis in that Mr Ghazi continued to bail the taxis and, from what he could recall, had the same taxi drivers continue to work with him as before.

100. Mr Tanwar wrote:

“Although I became the registered owner, but nothing changed in the day to day running of the taxis in that he continued to bail the taxis, he had from what I recall the same taxi drivers continue to work with him as before, taxi drivers paid the Pay-In amount to him, he negotiated and made Pay-In arrangements with any old or new taxi drivers, organised the taxi driver’s shifts for different taxis and continued

to do the changeover for taxis at the BP service station at Silverwater, provide taxi stationery to the drivers, by that I mean things such as driver worksheets, visiting cards and EFTPOS paper rolls etc, collecting the Pay-Ins and driver worksheets from drivers, organising any maintenance for the taxis, he used the same mechanic as before, organising the quarterly taxi inspections from the same authorised taxi inspection station as before so forth.

During the same period that Hameed Ghazi was also an operator/bailor for other taxi owners from the BP service station at Silverwater in circumstances identical to Hameed Ghazi and myself, whereby another person owned the taxis and Hameed Ghazi would manage all of the operations. During the period if any taxi driver worked for Hameed Ghazi, in my opinion they would not be aware who owned the taxi that they were driving. In fact the driver would assume that Hameed was the owner and operator. During that period any old drivers and especially any new taxi driver who started working from BP service station from Silverwater would only deal with Hameed and no-one else and they would make all bailment arrangements with Hameed. There was no way for any taxi driver to know that Hameed did not own the taxis.

I believe that almost no taxi driver wouldn't have known at the time that I was the registered owner for the taxis, which Hameed used to own and operate, as the arrangement between Hameed and drivers had not changed at all, one of those taxis was T-1078.

I let (sic) to believe that Farooq Aslam started to drive the taxi with Hameed from BP Silverwater in about in October 2006. At that time any or all bailment arrangements was made by, was made between Farooq and Hameed and not with me. I also believe at that time Farooq was not aware that the taxi he had bailed from Hameed was owned by me. The only link Farooq had with me was that the taxi he drove was owned by me. All changeovers Farooq had for any taxi he drove at the time was with Hameed at the BP service station at Silverwater.

Farooq has never given any worksheet or Pay-Ins to me and did not contact me during his bailment in the 2006 period.

I am aware now that on 20th October 2006 Hameed bailed T-1078 to Farooq Aslam. However, I did not know about the incident until I received a letter from Farooq's solicitors after many years.

Farooq never contacted me on the date of the incident or thereafter."

101. In a statement dated 8 May 2020, Mr Tanwar, stated that in the year 2005 he was the owner of three taxi registration plates, the lessee of three taxis registration plates, the owner of six cabs (vehicles), the registered owner and "accredited operator" of all six taxis. He stated that the registration numbers were T-1478 (owner), T-2879 (lessee), T-3331 (owner), T-4911 (lessee), T-5103 (lessee) and T-7640 (owner).

102. Mr Tanwar wrote:

"In November 2005, I purchased 5 cabs (vehicles) from the fourth respondent and took over all the taxi leases, which the fourth respondent with TCS (Taxi Combined Services) network, now known as 13cabs. While I did so, I signed new lease agreements and new management papers with the TCS network. Thereafter, I became the registered owner/accredited operator/lessee of these taxis. The registration numbers of those taxis were as follows:

T-186 (lessee)
T-1078 (lessee)

T-1526 (lessee)
T-4495 (lessee)
T-7899 (lessee).

However before the fourth respondent sold these taxis to me, he placed a condition that he would only sell his taxis to me if I agreed for the fourth respondent to continue to operate these taxis. The fourth respondent also said to me he had to sell his taxis because he had legal and financial problems. As this arrangement was suitable to me I agreed.

Afterwards, I became the registered owner/accredited operator/lessee of these taxis, I sub-leased these taxis back to the fourth respondent on a fixed weekly lease for the sum of \$1,300 per week approximately. The leasing arrangement for these taxis was still in place at the end of 2006. The fourth respondent was paying me by EFTPOS (which are used by his drivers in a taxi), Cab-Charge dockets and cash. Each day when the taxi drivers used any EFTPOS machine installed in the taxi, which was linked to my account with the TCS network, money was deposited to my account. This was because I was the registered owner/accredited operator of these taxis. After about a week, the fourth respondent was providing me with EFTPOS receipts, Cab-Charge dockets for each taxi and in the event, if the total of the EFTPOS receipts and Cab-Charge dockets was less than \$1,300 then the fourth respondent paid the balance/shortfall in cash. However, if the total of the EFTPOS receipts and Cab-Charge dockets were more than \$1,300, then I paid cash to the fourth respondent.

The fourth respondent made arrangements for the taxis according to his own choice and was responsible for the following:-

- a. to arrange or find taxi drivers for the taxi,
- b. negotiate and make Pay-Ins arrangements/agreement with the taxi drivers as he liked,
- c. organise any taxi drivers shift and changeovers for these taxis,
- d. communicate with taxi drivers regarding which taxis they are driving, shift timings, changeover locations and time, arrangements for pick up and dropping off taxi keys,
- e. check the roadworthiness of the taxi and arrange repairs/maintenance accordingly,
- f. provide taxi stationery ie taxi driver daily worksheet, EFTPOS paper rolls and visiting card etc,
- g. make up a taxi driver roster to know which taxi driver is driving which taxi on any given day with their start and finish time stated,
- h. make arrangements to collect Pay-Ins and taxi driver daily worksheets from drivers.

At the same time as a registered owner/accredited operator/lessee for these taxis which I purchased from the fourth respondent and subleased back to him, I was responsible for the following:

- a. to pay for any or all registration costs,
- b. to pay for any or all quarterly inspection fees,

- c. to pay taxi lease to TCS Network for the taxi registration plate owner,
- d. to pay network radio fees to TCS Network,
- e. to pay for any or all repairs and maintenance,
- f. to pay for any or all comprehensive/third party insurances.”

103. Mr Tanwar stated that at no stage did he have any dealings directly with Mr Ghazi’s drivers and as far as he was aware they did not know he was the owner of the taxis they were driving. He stated that between November 2005 to January 2007, there were a few occasions where a taxi was replaced with another taxi which Mr Ghazi subleased from him. He stated that taxi T-1078 was one taxi that Mr Ghazi had complete control of and he continuously made all arrangements for taxi drivers during this period until he stopped working.

104. Mr Tanwar stated:

“Further to my previous statements dated 18/4/2008, 18/06/2018 and 20/02/2020, I would like to confirm again that I did not bail any taxi to the applicant at the time when he had started to drive the taxi from the BP service station at Silverwater in October 2006, and especially on 20 October 2006. The applicant also never contacted me after the incident on 21 October 2006. I had no dealing/communication personally or over the phone with him.”

105. Mr Tanwar stated that while searching for records he found one of his handwritten books which was part of his official bookkeeping. He stated that the record confirmed which taxi was driven by which taxi driver on a particular day and their Pay-Ins for the day. He noted that the taxis were T-2879, T-1478, T-3331, T-5403, T-7548, T-4495, T-4966 and T-7640. He stated that although at the same time he was the registered owner of other taxis including T-1078, he did not keep any records for these taxis because Mr Ghazi was doing that as bailor/operator/sublessee and was completely responsible for the bailment of these taxis.

106. Mr Tanwar stated that on about February 2008 he received a letter from Carter’s Law Firm, solicitors for Mr Aslam, seeking payment of workers compensation. He stated that he did not agree that Mr Ghazi did not bail taxi T-1078 to Mr Aslam. He said that he disagreed that Mr Ghazi had never met Mr Aslam as stated in Mr Ghazi’s statement of 20 April 2020. He said that Mr Ghazi had confirmed to him on or about February 2008, after he received a letter of demand from Mr Aslam’s solicitor, that he knew Mr Aslam and Mr Aslam owed him money.

107. Mr Tanwar said that he had further conversations in June 2012 about Mr Aslam’s claim with Mr Ghazi. Mr Tanwar referred to his statement dated 18 April 2008, and his statements dated 18 June 2018 and 26 June 2018 (these statements are not in evidence).

108. Mr Tanwar stated that he did not agree that Mr Ghazi, was his employee because he never paid him any wages or salary, never withheld any tax from Mr Ghazi, never issued him with any group certificate, never paid any superannuation into a nominated account, never supplied him with a uniform or gave him tools, never provided him with a vehicle or travel allowance, never provided him with a rostered time to start or finish, never paid him holiday pay or sick leave, never provided him with any accommodation, and never paid him any weekend loading or overtime.

109. Although he disagreed that Mr Ghazi was his employee, Mr Tanwar agreed that Mr Ghazi’s duties included arranging drivers for taxis, rostering and arranging any repairs or maintenance for taxis, in accordance with their agreement set out above.

110. Mr Tanwar disagreed that Mr Ghazi was an employee of his or of Tanwar Enterprises.

111. Mr Tanwar stated that Mr Ghazi had said that his duties included arranging drivers for taxis, rostering and this was the main and important job of any bailor in the taxi industry in NSW. Mr Tanwar stated that the bailor, who did this work, would know how many shifts any driver had driven in a week, how much money to charge for each shift, and collect the Pay-In accordingly. He said it would not be practical for him to know how much money was to be collected from each or any driver.
112. Mr Tanwar disagreed that he paid Mr Ghazi a salary, or that Mr Ghazi was his employee. He disagreed that Mr Ghazi began working from Petersham in February 2006 and was managing 13 taxis on his behalf. He stated that he in fact purchased the service station at Lewisham in May 2006 and Mr Ghazi did not manage 13 taxis for him. He stated that even after he had the service station at Lewisham, Mr Ghazi was mainly operating the taxis from the BP service station at Silverwater and not only for him but for other taxi owners.
113. Mr Tanwar stated that it would be illegal for Mr Ghazi to arrange drivers for taxis and make a roster without having met them and not collect or take their details. He said it was a mandatory requirement of the Department of Transport for an operator/bailor to confirm the identities of the taxi drivers, keep a record of the driver's licence, and the taxi driver's authority card details, and make sure that the driver's licence and taxi driver authority was current and not suspended or cancelled before they could bail-out any taxi to them. He stated it would be almost impossible for Mr Ghazi to have not met Mr Aslam as he was the taxi driver of taxi T-1078.
114. Mr Tanwar wrote:
- "I disagree that the fourth respondent was not the bailor/operator for taxi T-1078 or any other taxi owned by myself in 2006."
115. Mr Tanwar agreed that he had a draft statement of Mr Ghazi with him but did not agree with the contents of the conversation between himself and Mr Ghazi as noted in Mr Ghazi's statement dated 20 April 2020.
116. Mr Tanwar stated that he had never suggested that Mr Ghazi was the registered operator of taxi T-1078 (in response to point 36 of the Mr Ghazi's statement).
117. Various pages of an exercise book named "Taxi Book ... /05" were attached to Mr Tanwar's statement. It appears that these pages set out details of Pay-Ins in October 2006 made in respect of a number of taxis. The taxis appear to be T-1478, T-3321, T-1105, T-7640, T-7548, T-1966 and T- 4498.
118. In a further statement dated 8 May 2020, Mr Tanwar stated that he was the company director for Tanwar Enterprises. He said that on or about September 2007 as a director of Tanwar Enterprises, he received a letter from Carter's Law Firm, Mr Aslam's solicitors, seeking the name of the workers compensation insurer as at 20 October 2006. He said that this was the first time he became aware as director about any workers compensation claim made by Mr Aslam. He said he then engaged the services of John F. Morrissey and Company lawyers to respond to Mr Aslam's solicitor. He said that his solicitors wrote to Carter's Law Firm and confirmed that Tanwar Enterprises did not employ any worker named Farooq Aslam and were not aware of any incident on "20 October 2006" (sic).
119. Mr Tanwar stated that he had seen the statement of Mr Ghazi dated 20 April 2020 and said that Mr Ghazi was never employed by Tanwar Enterprises. He disagreed that Mr Ghazi began working from Petersham in February 2006 and was managing 13 taxis on behalf of Tanwar Enterprises.

120. In cross-examination on 15 October 2020, Mr Tanwar confirmed that as at 17 July 2006, he was the owner of taxi T-1078. He gave evidence that the unsigned statement of Mr Ghazi and the various statements of Charlie Kazzi, Brian Carabine and other witnesses were typed by his son, Abhay Tanwar. He gave evidence that there was a meeting with some of the witnesses and others were contacted by telephone by either himself, his son or another staff member.

121. Mr Tanwar said that he owned and operated some taxis and some taxis were owned and operated by Tanwar Enterprises. Mr Tanwar gave the following evidence at p125 [10]-[30]:

Q. So you're saying that although you were the owner of the taxi you did not know, in October 2006, that the owner of the taxi might be liable for injuries occurring to drivers of the taxi?

A. That's what I'm saying my understanding - - -

Q. How would you - - -

A. - - - my understanding was, yes, as the owner I was responsible, that was my understanding. But that was not the correct understanding. That was wrong understanding. Because as the owner does not mean I am the operator of the taxi, I'm not the bailor but ... (not transcribable 3.31.05).. as the owner I am responsible as a bailor of the taxi as well.

Q. So you then thought that the bailor would be liable but not the owner, is that what you tell the Tribunal?

A. That's what I find out in 2018 when we, I met Mr Campbell.

Q. So you didn't know that in 2006, is that what you say?

A. Correct, yes.

122. And at pp 126-127, Mr Tanwar gave the following evidence:

"...I said between 2006 and 2000 I'd say up to 2004 or 2005 I have the insurance and I was operating only maybe two or three taxis. And on 2005 December that's what, we start, I buy more taxis. I think seven or eight taxis I brought from Hameed Ghazi in 2005.

Q. So by, for the last two years of that period, 2005 and 2006 you were operating about thirteen taxis, is that correct?

A. About that, yes.

Q. Thank you. And you tell the Tribunal that you did not have at that time any correct understanding of possible workers compensation liability for drivers of those taxis, is that what you say?

A. Yes, you can say that. I think I'll go back to one question before. I was not operating those taxis, I was owning the taxi and I was the registered operator of the taxi and as a registered operator of the taxi and owner I did not have the insurance I thought I should have at that time, yes.

Q. So you were saying, you then say that the proper construction is that you owned the taxi in 2006 but that Mr Ghazi then contracted in some manner with you and he then employed Mr Aslam, is that what you say?

A. Yeah, that's what, he bailed the taxi to Aslam, yes, on 2006.

Q. All right. Well I put to you that that is a complete false assertion and a concoction on your part, what do you say?

A. I totally disagree with that."

And at pp 140-141 [15]- [10]:

"Q. Well that happened. If you want to give the Tribunal an explanation as to why that happened please do so.

A. O.K. Because, like I said to you before, my understanding until 2018, when I met Mr Campbell that if I'm a registered operator of the taxi I am responsible for workers compensation. And my understanding to Mr Vasta at the time was that workers compensation solicitors have already rejected the claim for Farooq Aslam. They did not say, and they are fighting against him in this Commission thing and, so there was no point me, because as a non-insured person I have to spend my own money for the legal cost for this thing and for that reason Mr Vasta, I engage him, who is a solicitor but not really practice on full-time basis and I did not understand and that's the only reason I never, never involve Hameed Ghazi in the proceeding because I did not want to name him, not believing that he was the operator. I was always believing as the register operator of the taxi I were responsible but now when I find out that that's not the case then in 2018 that's what we press on this proceeding to join Mr Ghazi.

Q. In time, like, about 2008, 2012 you were maintaining that a Mr Millard M-I-L-L-A-R-D was the bailor were you not?

A. No, we were, we were not sure whether taxi was given to Farooq Aslam by Millard or Hameed Ghazi because I was not involved in taxi at all."

123. In re-examination, Mr Tanwar gave the following evidence at p 154 [7]-[20]:

"Q. All right. Now, looking at the first, the document, the first page – sorry, withdraw that – the second page which has a stamp on, alleged to have been from your company, what do you say about that?

A. Like I said to the other barrister that we, I personally and my company never had such a stamp.

Q. When you say you never had such a stamp, did you have a stamp but it was in a different format?

A. Not in 2006 but 2008 and 2009 we made a stamp but which is a round, oval shaped stamp and we always had that stamp even today."

124. In cross-examination on 2 December 2020, Mr Tanwar gave the following evidence at p 14 [0]-[15]:

“Q. Well, I suggest to you that the evidence of the matters that I’ve just put to you being the transcript of the proceedings, the official proceedings between you and Mr Aslam for 26 October 2012 records the very matter that I just put to you, that is, your solicitor, presumably on instructions from you, announced that the defence of bailment was abandoned, do you agree with that or not?

A. For the third time I will say again that we have not abandoned. We have not abandoned. We only say we don’t want to continue on that particular point does not mean abandon.”

...

And at pp 29-30 I put the following questions to Mr Tanwar:

“Q. ...Mr Tanwar, as at the date when the applicant was injured on 21 October 2006 is it correct that you were the registered owner of 13 taxis?

A. Yes, between myself and my company, yes, I think, yes, correct.

Q. Okay. So some of those taxis were owned by you and some by your company?

A. Correct.

Q. Do you recall who owned T1078?

A. The owner was Ramesh Tanwar.

Q. So you owned that personally?

A. Correct, yes. We always accepted that.

Q. Right. But other taxis were owned by the second respondent, your company?

A. Some of the, yes, I think five maybe company, I’m not sure but between two of them some was from Tanwar Enterprise, some for Ramesh Tanwar.

Q. Right. And who would’ve paid for the registration and insurance on T1078 at that time?

A. It’s paid by me, by myself.

Q. By you personally?

A. Yes.

Q. Right. And am I correct in understanding that you maintain that when the fourth respondent Mr Ghazi sold you five cabs that you say he continued to operate those taxis including 1078?

A. Correct.

- Q. And did you continue to operate the other, I think it's seven or eight taxis that you had?
- A. No, I did not continued, in fact, slowly I think we have given in almost all the taxis except for one or two but he was operating all the taxis almost.
- Q. Sorry - - -
- A. Sorry, he was doing it five, and I don't have the full numbers, but he was almost doing all my taxis and some taxis was done by myself apparently.
- Q. So you operated some and he operated some?
- A. Yes, correct.
- Q. Okay.
- A. For some short period, yes.
- Q. All right. And then I think it would've been in 2007 were your taxis then all operated by your company with Ms Kaur as the operator?
- A. I think 2008, if I remember. 7 or 8, I'm not sure. I don't have the dates but, yes, when Ghazi gone then Ms Kaur came and then shew as the bailor for the taxis.
- Q. Did that happen straightaway or when Mr Ghazi stopped work did you take over?
- A. No, there was some gap for few months, if I remember.
- Q. Right. Okay. And apart from Mr Ghazi did anybody else operate any of the taxis you owned?
- A. My wife was doing operations of some time. We have a mechanic, he was operated but only short period. Not anybody for a long time, like operator like Ghazi involved.
- Q. But as at the date of this incident on 21 October 2006 was anybody other than Mr Ghazi operating your taxis?
- A. No."

Evidence of Gurpreet Kaur

125. In a statement dated 18 February 2020, Ms Kaur stated that she started to operate taxis owned by Mr Tanwar and by Tanwar Enterprises in February 2008 and had been operating those taxis for a period of more than 12 years. She stated that she had never seen Mr Tanwar involved in any taxi operation activities since 2008.

126. Ms Kaur wrote:

“4. As the operator of taxis it is my responsibility to bail/hire the taxi concerned to the different drivers who wished to hire and make the necessary arrangements with them for the shifts they wished to drive. It was also my job to find drivers, discuss payment (Pay-Ins), charges/rate, arrange the driver rosters for morning shift and afternoon shift, discuss with the drivers about their general conditions of bailment and arrange any repairs and maintenance as required for the taxi and dealing with all incidents and accident matters.”

127. Ms Kaur stated that in relation to Mr Aslam, she was recently shown a statement of Taseer Qasim whom she used to call “Raja”. She stated that she knew him well as he had driven a taxi for her in 2008 and 2009.

128. In a statement dated 21 February 2020, Ms Kaur said that she had seen the driver Farooq “taxi driver daily worksheet” dated 17 October 2006, 18 October 2006 and 20 October 2006 with the stamp of Tanwar Enterprises Pty Ltd and dated stamp and somebody’s signature. Ms Kaur said she had been the taxi operator for taxis owned by Tanwar Enterprises Pty Ltd since 2007 and had never seen any “taxi driver daily worksheet” with a stamp of Tanwar Enterprises Pty Ltd, dated stamp or the signature of someone else other than the taxi driver on the taxi worksheet. She stated she always provided a blank copy of the taxi driver daily worksheet to any or all taxi drivers who worked or were working with them.

Evidence of Va Hoi Dinh

129. In a statement dated 21 February, 2020 Mr Dinh stated that his operator, Preet, had shown him driver Farooq’s taxi driver daily worksheets dated 17 October 2006, 18 October 2006 and 20 October 2006 with stamp of Tanwar Enterprises Pty Ltd and dated stamp and somebody’s signature.

130. Mr Dinh wrote:

“I am taxi driver for more than 28 years and I have been driving the taxi with Tanwar Enterprises Pty Ltd for more than 13 years. During my taxi driving with Tanwar Enterprises Pty Ltd, I have never seen any of ‘taxi driver daily worksheet’ with stamp of Tanwar Enterprises Pty Ltd, dated stamp and signature of someone else other than the taxi driver on the taxi worksheet. The taxis always have blank copies of taxi driver daily worksheets which always filled by me before start my shift. I write all details after checking the kilometres, time start, camera working condition and other condition of the taxi. I have never seen any operator sign this worksheet. I also write finish kilometres at the end of my shift.”

Evidence of Say Tong Lum

131. In a statement dated 21 February 2020, Mr Lum stated he had been driving a taxi for approximately 28 years and had driven for about four operators. He stated he had been driving for Tanwar Enterprises for many years and during this period he always handwrote the taxi driver worksheets.

132. Mr Lum wrote:

“Every worksheet I have ever used, I have never seen a company stamp or date stamp and signature by someone other than taxi driver. I have always filled out and signed by taxi driver worksheet before I start my shift.

Today my operator 'Preet' shown me Farooq 'taxi driver daily worksheet' dated 17.10.2006, 18.10.2006 and 20.10.2006 with stamp of Tanwar Enterprises Pty Ltd dated stamp and also someone's signature.

Since I am driving with Tanwar Enterprises Pty Ltd, I never seen any stamp of Tanwar Enterprises Pty Ltd on taxi driver daily worksheet and also never seen any worksheet with date stamp and signature."

133. Mr Lum stated that he had worked for some other operators but never seen any operator keep the worksheet with stamp of company name especially date stamp. He stated that taxi drivers always filled the worksheet by themselves.

Evidence of Lars Johan Sundberg

134. In a statement dated 21 February 2020, Mr Sundberg stated that he had been a taxi driver since 1 June 2000 and had worked with a number of operators. He stated that today, Preet, his taxi operator, showed him the "taxi driver daily worksheet" of Farooq dated 17 October 2006, 18 October 2006 and 20 October 2006 with stamp of Tanwar Enterprises Pty Ltd, dated stamp and with someone's signature.
135. Mr Sundberg stated that he had been driving a taxi for Tanwar Enterprises Pty Ltd for many years and in this period always filled out the worksheets by himself. He said he had never seen any worksheet like this with the company stamp or date stamp and signature. He stated that he had worked for other operators also and had never seen any operator keep the worksheet with the stamp of the company name and date stamp and stated this was quite unusual.

Evidence of Quazi Shahidul Islam

136. In a statement dated 21 February 2020, Mr Islam stated he had been a taxi driver since 1997 and driven for a number of operators in Sydney. He stated he started driving a taxi for Tanwar Enterprises in 2010 and in that period always filled out the worksheets by himself, and that had been his practice since 1997. He stated he had never seen a company stamp or date stamp or signature by an operator on a taxi driver daily worksheet.

137. Mr Islam wrote:

"Today, Preet, my taxi operator, shown the 'taxi driver daily worksheet' of Farooq dated 17 October 2006, 18 October 2006 and 20 October 2006 with stamp of Tanwar Enterprises Pty Ltd, dated stamp and with someone's signature.

Since I am driving with Tanwar Enterprises Pty Ltd I have never seen the stamp of Tanwar Enterprises Pty Ltd on taxi driver daily worksheet and dated stamp.

I have also worked for other taxi operators but never seen any operator keep the taxi worksheet with stamp of company name, especially date stamp is very weird, as while filling worksheet sometime driver can make mistake. So driver worksheet with date stamps is very odd."

Evidence of Alfio Santangelo

138. In an undated and unsigned statement, Mr Santangelo said that his operator Preet had shown the driver Farooq "taxi driver daily worksheet" dated 17 October 2006, 18 October 2006 and 20 October 2006 with the stamp of Tanwar Enterprises Pty Ltd and dated stamp and somebody's signature. Mr Santangelo said that he had been driving taxis since 1997 and had been driving with Tanwar Enterprises for more than 13 years.

139. Mr Santangelo stated that during his taxi driving with Tanwar Enterprises he had never seen any taxi driver daily worksheet with the stamp of Tanwar Enterprises Pty Ltd, dated stamp and signature. He stated that the taxis always had a blank copy of the taxi driver daily worksheet which was filled out by him before he started his shift. He said he wrote the kilometres, time start, camera working condition and other conditions of the taxi. He said he had never seen any operator sign this worksheet. He said he also wrote finish kilometres at the end of the shift.

Evidence of Charlie Kazzi

140. In a statement that was undated and unsigned, Charlie Kazzi said that he was the owner and operator of Burwood Petroleum mechanical workshop in Haberfield, which was an authorised taxi inspection station, part of a quality assurance system operated by the Department of Transport in co-operation with the NSW Taxi Council. He described his main business as carrying out quarterly taxi inspections and repairs. He stated that he had been shown two taxi inspection reports dated 17 July 2006 and 6 March 2007 for taxi T-1078. He confirmed that he had written the details in the taxi inspection reports at the time of inspection and stated that as at 17 July 2006 the odometer reading was 221306 and at 6 March 2007 the odometer reading was 310391. The make, model and e.VIN numbers were the same in both reports, that is, Ford, Model AU11 and e.VIN number 6FPAAAJGSW1858963.

Evidence of Brian Carabine

141. In a statement dated 3 November 2019 Brian Carabine stated that he started driving taxis for Mr Tanwar around 2004. He said he often started his shift from the day driver's home. He said that in later 2005 he came to know that Mr Tanwar had bought some more taxis from someone who had a taxi base at the BP service station at Silverwater. He stated that after that he started driving from the BP at Silverwater and all his dealings regarding Pay-ins, maintenance and which taxi to drive were handled by a man at the BP service station at Silverwater. Mr Carabine said that he could not remember the man's name but he was originally from the subcontinent and he had since been informed that his name was Hameed, which was probably right. He stated that this man provided daily worksheets, business cards or CabCharge dockets and took care of maintenance for the taxis with a mechanic at the BP.

142. Mr Carabine stated that in around June 2006, the man informed him that most of the taxis had been shifted to Lewisham as Mr Tanwar had purchased the service station there, but some taxis would remain doing changeover at the BP. Mr Carabine said he continued to pick up taxis from BP Silverwater and on some occasions from Lewisham as told. He said when he attended the service station at Lewisham Mr Tanwar was always busy at the sales counter and he never saw him involved in the operation of the taxis as this was handled by the man who he was informed was called Hameed.

Evidence of Milad Saghabi

143. In an undated and unsigned statement, Milad Saghabi stated that he had been driving a taxi for more than 25 years for different operators. He said he was shown copies of taxi driver daily worksheets for the driver Farook [sic] for the year 2006. He said that in his daily practice, before he started a shift he always took a blank, not filled, worksheet from the taxi glovebox and filled it in himself and signed as the nominee of the operator. He said he never saw in his 25 years' experience any daily driver worksheets with the stamp of an operator's name or date stamp. He said that since 2006, even when Hameed was the operator of Tanwar Enterprises Pty Ltd, he never saw any worksheets with the stamp of Tanwar Enterprises Pty Ltd or a date stamp. He said he had never seen such a stamp or stamp with the date on the driver's daily worksheet during Preet's time.

Evidence of Zahoor Ahmed Arshad

144. In a statement dated 21 February 2020, Zahoor Ahmed Arshad, stated he had been a taxi driver for more than 25 years for different taxi operators. He stated he had been shown copies of daily taxi driver's worksheets for the driver Farooq for the year 2006. He stated that it was his daily practise before starting a shift to take a blank (not filled) worksheet from the taxi glovebox and fill it out himself and sign as the nominee of the operator. He said that in 25 years he never experienced any daily driver worksheets with the stamp of the operator name or date stamp. He stated that since 2006, even when Hameed was the operator of taxis owned by Tanwar Enterprises, he had never seen any worksheets with the stamp of the second respondent or a date stamp. He stated he had never seen any worksheets with a stamp or a stamp with the date on the driver's daily worksheet during the period he worked with Hameed or Preet.

Evidence of Abdul Bary

145. In a statement dated 20 February 2020, Abdul Bary stated that he started driving taxis for Mr Tanwar in 2003 and continued to drive for him until 2019. He stated that at the beginning of his shift he picked up the taxis from various locations where either the day or night drivers lived.

146. Mr Bary wrote:

"I remember around 2005, Ramesh Tanwar asked me to contact Hameed Ghazi, if I needed to drive a taxi as Hameed had started operating his own taxis. On many occasions I went to drive a taxi from the BP service station at Silverwater Road at Silverwater.

Whenever I drove a taxi from Silverwater, I met Hameed Ghazi who advised me which taxi I had to drive on the day and at the end of my shift, I handed over the taxi keys along with my Pay-Ins and driver's daily worksheet in an envelope provided by Hameed Ghazi to the console operator at the BP service station."

Evidence of Shirley Anne Tanwar

147. In a statement dated 20 February 2020, Shirley Anne Tanwar stated that Ramesh Tanwar purchased five taxis from Mr Ghazi sometime in late 2005. She stated that in late 2005 or early 2006 the family went to India for a family function and during this period Mr Ghazi operated all the taxis owned by them. She said that in April 2006 Mr Tanwar purchased a service station business in Lewisham and because he was busy with the service station business, Mr Ghazi continued to operate taxis between Silverwater and Lewisham. She said that Mr Ghazi dealt with all the drivers regarding their shifts, Pay-Ins and any maintenance required for the taxis.

148. Mrs Tanwar stated that she had seen a statement made by Mr Aslam in which he said he did a taxi changeover at their home in Bella Vista in 2006. She said she had "never met or seen Farooq Aslam do a taxi changeover at our home in Bella Vista". She stated that in late 2004 or early 2005 they had a problem with neighbours complaining about taxi changeovers taking place at their home and after that no taxi changeovers were made at their home.

149. Mrs Tanwar said that she had been advised that an accident happened on 20 October 2006 (sic) with T-1078. She said that this day was an Indian festival and the day after was Diwali, the biggest Indian festival, and they were involved in preparing for festivities. She stated that if anything had happened out of the ordinary during this period she would most probably have remembered.

150. Mrs Tanwar stated that Mr Ghazi operated their taxis up until late 2006 or early 2007 and then had health problems and was unable to continue. She said that Mr Tanwar then took over operations of the taxis for a short while and in 2008 Ms Kaur took over as operator and manager for the taxis.
151. In a statement dated 22 April 2020, Shirley Anne Tanwar stated that she had seen the statement of Mr Ghazi dated 20 April 2020. She said that in the middle of June 2018 Mr Ghazi attended their home and he had a conversation with Mr Tanwar about Mr Aslam in her presence and the presence of Abhay Tanwar. She observed that Mr Ghazi was prepared to make a statement about Mr Aslam and Abhay Tanwar was making notes of the information Mr Ghazi was providing for a draft statement. She also stated that she, Mr Tanwar and Abhay Tanwar attended Mr Ghazi's home on 18 June 2018 and had dinner there and went through the statement with him. She said that he agreed to sign it but wanted to first show it to his daughter. She stated that Mr Ghazi at no stage denied knowing the applicant. She stated that they never talked about properties or bankruptcy.

Evidence of Abhay Tanwar

152. In a statement dated 20 February 2020, Abhay Tanwar, son of Ramesh and Shirley Tanwar, stated that in late 2005 or early 2006 his family went to India for the wedding of a cousin. He remembered that Mr Ghazi had started operating taxis owned by his father. He said that the taxis operated by Mr Ghazi were changed over at the BP service station at Silverwater and they did not do any taxi changes at their home after 2004 because neighbours had complained earlier about this.
153. Mr Abhay Tanwar stated that Mr Ghazi ceased operating his father's taxis in 2007 because of health problems. He recalled that Mr Ghazi handled and arranged changeovers at Lewisham after his father, Mr Tanwar, purchased a service station in May 2006 and also at the BP service station at Silverwater.
154. In a second statement dated 22 April 2020, Mr Abhay Tanwar stated that he had seen the statement of Mr Ghazi dated 20 April 2020. He said that he had visited Mr Ghazi's home on 18 June 2018 with his parents and taken with them a statement that he had prepared a few days earlier based on a conversation between Mr Tanwar and Mr Ghazi. Mr Abhay Tanwar said that when his father spoke to Mr Ghazi, he asked how providing a statement would help and his father said that "You were dealing with him and especially you have bailed the taxi on the day he had the incident. We have to provide as much information we could to the court like how long Farooq was off work, details of his injury etc." Mr Abhay Tanwar said that Mr Ghazi agreed to provide a statement but said he did not know how to prepare it and his father said they would prepare a draft statement from the information he provided. Mr Abhay Tanwar said that he then took notes of the information given by Mr Ghazi.
155. Mr Abhay Tanwar stated that on 18 June 2018, he attended Mr Ghazi's home with his parents and after dinner they started to go through the draft statement. He said that Mr Ghazi agreed with all the points and did not disagree with anything but did not sign it as he wanted to consult with his family including his daughter who was a solicitor. Mr Abhay Tanwar stated that there was no discussion about properties or bankruptcy. He said that Mr Ghazi stated many times during the evening that he remembered who Mr Aslam was and had dealings with him.

Evidence of Haissam El-Azzaz

156. In a statement dated 15 February 2020, Haissam El-Azzaz said that he was a motor mechanic at Burwood Petroleum in Haberfield from 2008 until 2018. He stated that one of his regular customers was Mr Ghazi, who operated a number of taxis and brought his taxis for regular inspections to Burwood Petroleum. He stated that he became friendly with Mr Ghazi

and was aware that he operated taxis from the BP service station at Silverwater. He stated that one of the owners who Mr Ghazi had sold his taxis to was Mr Tanwar. He said that after Mr Tanwar bought the taxis from Mr Ghazi, Mr Ghazi started to bring all of Mr Tanwar's taxis for taxi inspections as he had taken over taxi operations of Mr Tanwar's taxis.

Evidence of the fourth respondent, Abdul Hameed Ghazi

157. In an unsigned draft statement dated 18 June 2008, Hameed Ghazi stated that he had owned and operated taxis for a period of more than 20 years. He stated that due to personal issues and financial difficulties he could not continue to own his taxis and therefore he sold all his taxis to different owners/operators, including Mr Tanwar.

158. Mr Ghazi wrote:

- “4. After selling taxis to Mr Tanwar, Mr Tanwar tried to operate them but it was very difficult for him due to his family and other commitments, therefore Mr Tanwar leased some of his taxis to me on a weekly basis. One of these taxis was T-1078.
5. As the operator of T-1078, it was my responsibility to bail/hire the taxi to the different drivers and make the necessary arrangements with them for the shifts they wished to drive. It was also my job to find drivers, discuss payments (Pay-Ins), charges/rate, arrange the drivers for morning shift and afternoon shift, discuss with the drivers about general conditions of their bailment and arrange any repairs and maintenance as required for the taxi.
6. One of these drivers was Farooq Aslam. I remember meeting Aslam at the end of 2005 at our BP service station at Silverwater. During our conversation he informed me that he wanted to work night shift Monday to Friday. We discussed and agreed on a fixed payment for the 5 days. I did not supply him with a uniform as he advised me he already had one.”

159. Mr Ghazi stated that after working at the end of November and December 2005, the applicant stopped hiring the taxi from him in early 2006. He stated that in June or July 2006 the applicant came back and wanted to hire the taxi on bailment.

160. Mr Ghazi wrote:

“This time I had to change my previous bailment arrangement regarding the Pay-Ins. This was because while he was working in 2005, I made the same Pay-Ins rate for Monday to Friday, but he always found an excuse not to work Monday or Tuesdays (quiet earning days for taxi drivers). Aslam's Pay-Ins were different for each day. He continued to drive shifts 3.00pm-3.00am Monday to Friday.”

161. Mr Ghazi wrote:

- “14. On the 21 October 2006 Aslam bailed the taxi from 3.00pm to 3.00am. His shift was to finish at 3.00am. Due to his usual habit he was still driving at 3.45 in the city, well past his bailment/changeover time.
15. About 2 weeks after Aslam's assault incident he started driving the taxi for me as normal.”

162. This draft statement is unsigned by both Mr Ghazi and the witness, Shirley Anne Tanwar.

163. In a signed statement dated 20 April 2020, Mr Ghazi stated that he had not bailed, leased or rented taxi T-1078 to the applicant at any time.
164. Mr Ghazi stated that he had owned and managed taxi businesses on and off for 15 years from some time in 1989 until 2005. He stated that he would lease the taxi plates from Taxi Combined Services, (TCS), now known as 13CABS, but did not own the plates. He stated that he did own taxi vehicles. He said that he operated one of his taxi businesses from some time in 2001 at the BP Petrol Station at Silverwater, where he would provide the taxis to drivers who would pay him a night, day or weekend shift rate in return for the taxi. Mr Ghazi stated that due to personal, health and financial issues at the time he no longer wanted to operate a business and sold the five vehicles to Mr Tanwar some time in November 2005. He stated that as far as he was aware, and around the same time, Mr Tanwar took over the leases for the five taxi plates, including the taxi plate lease for taxi T-1078 through TCS.

165. Mr Ghazi wrote:

“5. I have never met the applicant Mr Farooq Aslam.

...

11. Before the first respondent purchased the 5 vehicles from me, he asked me to work for him and help him out with managing the taxis as he had a number of taxis that he was operating at the time.

He said: ‘I will pay you and you manage the taxi business for me.’

I said: ‘OK.’

12. I believe that he asked me to do this because I had a lot of experience managing taxis. I also had a good relationship with the mechanics at the workshop at Silverwater and I knew some of the drivers who used to drive my cabs when I owned the vehicles.

13. I understood the arrangement to be of an employer and employee. My job title at the time was ‘Manager’.

14. As an employee of the first or second respondent, my duties included arranging drivers for the taxis, rostering and arranging any repairs or maintenance of the taxi vehicles at the BP Silverwater workshop.

15. Sometimes drivers would leave envelopes of cash with me and I would pass these onto the first respondent when I saw him. All payments or documents (ie worksheets) I received from the drivers were handed directly to the first respondent.

16. I received a salary from the first respondent in the sum of \$650 cash per week.

17. I believe that I was an employee of the first respondent because I was being paid a salary and I no longer had any interest in the taxi business that I sold to the first respondent.

18. Sometime in February 2006, the first respondent moved his taxi business to Speedway petrol station on Canterbury Road, Petersham. I believe he did this because he had purchased or leased the Speedway petrol station in Petersham, but I am not sure.

19. From some time in February 2006 I began working from Petersham and managing thirteen taxis on behalf of the first or second respondent.
20. I did not know or meet all the taxi drivers, as not all drivers did their shift changeovers at Silverwater or Petersham. Some drivers did their shift changeovers at their homes or at the homes of other drivers or at the home of the first respondent in Bella Vista.
21. After I sold the vehicles to the first respondent in November 2005, I did not lease the taxis back from the first respondent. I was not a taxi bailor or taxi operator for T-1078 or any other taxi owned or operated by the first or second respondents. I did not receive any income from any of the drivers of the taxis operated by the first or second respondents.”
166. Mr Ghazi stated that some time in December 2006 he met with Mr Tanwar at Petersham and stated that his health was not very good and he could no longer work for him.
167. In respect of an unsigned statement of Abdul Hameed Ghazi dated 18 June 2018, Mr Ghazi said that some time before 18 June 2018 Mr Tanwar phoned him and asked to see him. Mr Tanwar stated that someone was claiming workers compensation from him. Mr Ghazi stated that he told Mr Tanwar he could come and see him. Mr Ghazi stated that on 18 June 2018 Mr Tanwar, his wife and teenage son attended his home in Blacktown.
168. Mr Ghazi wrote:
- “25. The first respondent had in his hand some papers which looked like a statement with my name on it.
- He said: ‘I need you to sign a statement.’
- I said: ‘What is this statement about?’
- He said: ‘It’s about the guy who is suing me.’
- I said: ‘Why are you involving me?’
- He said: ‘Because my lawyer said you were the bailee.’
- I said: ‘No I am not a bailee. I was working for you. You gave me \$650 per week. Why are you involving me?’
- He said: ‘Because I have too many properties in my name and you don’t have anything in your name so if you take the responsibility, they can’t claim anything against you as you can show bankruptcy.’
- I said: ‘No, sorry, I will not sign the statement. It is not my business. It is not my responsibility.’
- He and his family then left my home.
26. I did not type, dictate, approve or sign the statement dated 18 June 2018. This is not my statement.”
169. In his statement dated 20 April 2020 under “Dealings with the Applicant”, Mr Ghazi stated that he had never seen or met the applicant, Farooq Aslam. He stated Mr Aslam was not a driver of T-1078 when he operated his taxi business up to November 2005.

170. Mr Ghazi stated that he first heard about Mr Aslam from the day shift driver of taxi T- 1078 after he stated working for Mr Tanwar or Tanwar Enterprises. He recalled the day shift driver's name to be a Mr Milad Saghapi, and he believed he may have arranged for Mr Aslam to be the night shift driver for taxi T-1078.
171. Mr Ghazi stated that he did not arrange for Mr Aslam to be a driver of taxi T-1078 while working for Mr Tanwar or Tanwar Enterprises. He stated that he was never contacted by Mr Aslam in relation to the incident or injury on 21 October 2006 and that the first time he heard about this matter was when Mr Tanwar called him and came to visit him at his home in June 2018 to ask him to sign a statement.
172. Mr Ghazi stated that he was a pensioner and had numerous health conditions including an existing heart condition. He stated he could not afford a lawyer to obtain legal representation and due to his health conditions and financial situation he was not able to spend any money that he had on legal representation. He stated he had asked family members to assist him in preparing these documents. Mr Ghazi stated that he did not have any records from the taxi business he sold in 2005 or any records confirming his employment with Mr Tanwar or Tanwar Enterprises in 2005 or 2006.
173. Mr Ghazi stated that on 20 April 2020 he attended the "13CABS" offices at 9-13 O'Riordan Street, Alexandria to see if they held any records in relation to him operating taxi T-1078.
174. Mr Ghazi gave the following evidence on 2 December 2020 at pp 33-35:
- "Q. Thank you. Now, I understand it's not in issue that you handed over a number of taxis for Mr Tanwar to own, is that right?
- A. Yes, sold to him.
- Q. Yes. So you sold him and he bought the vehicles together with the taxi plates, is that right?
- A. (NO AUDIBLE REPLY)
- Q. And he became the registered owner of those vehicles, correct?
- A. Yes.
- Q. Including taxi 1078?
- A. Yes.
- Q. All right. Now, what I understand you to say is you then continued to assist him in his taxi business, if I can call it that, but you stated that you were an employee of his, is that right?
- A. Yes.
- Q. And you were paid a weekly amount of money, correct?
- A. Yes.
- Q. And was that cash or was that - - -
- A. Cash.

- Q. Right. And who was paying you that cash as far as you were aware, was it him personally or his company?
- A. Ramesh.
- Q. All right. So you just got cash from him you say?
- A. Yes.
- Q. Okay. All right. Now, you know that – what I want to suggest to you is that in fact you weren't an employee but because of your experience in operating cabs you continued to operate those cabs on his behalf even though he became the owner, what do you say about that?
- A. He was the legally owner and operator, I was just assisting him to manage those taxis."

And at pp 37-38:

- "Q. However, as you say in your statement, that from then on you were, to use your words, managing 13 taxis on behalf of either Mr Tanwar or his company, correct?
- A. Yes.
- Q. Now, that included, did it not, arranging which drivers would drive which taxis?
- A. Yes, ... (not transcribable 01:01:02) ... each other ... (not transcribable 01:01:05) ...
- Q. And that would include taking the money from the drivers?
- A. They come every week and drop the money at the service station in the Petersham where we were operating and I hand over ... (not transcribable 01:01:20) ... Ramesh, that's all.
- Q. Right. So the drivers would give you money at the end of every week?
- A. Yes.
- Q. And that money was a set rate for the use of the taxis, correct?
- A. Yes, money for the taxis ... (not transcribable 01:01:38)..
- Q. No, what I'm asking you is that they didn't give you all of their takings, they gave you a set amount of money to represent, in effect, the cost of the hire of the vehicle, correct?
- A. Yes.
- Q. What about the daily worksheets, what happened to those?
- A. ... (not transcribable 01:02:18) ... Ramesh ... (not transcribable 01:02:21).. I have nothing to do with this one. They will bring... (not transcribable 01:02:24) ...

- Q. So I take it then that you would have got to know the taxi drivers that were driving the vehicles that he owned, correct?
- A. ... (not transcribable 01:02:54).
- Q. You would've come to know who was driving those vehicles, you knew the men that were driving the vehicle? Is that right?
- A. I know two of them who was driving, yes.
- Q. A few of them. So how many did you know?
- A. I don't know, I'll ask them because they keep their places and few taxis coming ... (not transcribable 01:03:19) ...I know that. Most the day drivers.
- Q. When you say a few was it only three of them or was it more than three?
- A. ... (not transcribable 01:03:31) ... five, six taxis coming over there on a regular basis ... (not transcribable 01:03:36) ... places as Ramesh ... (not transcribable 01:03:38) ... drivers.
- Q. I'm sorry, I missed the last bit of that answer.
- A. ... (not transcribable 01:03:50) ...

ARBITRATOR:

- Q. Mr Ghazi, could you just repeat your answer a little bit more slowly, thank you.
- A. I said some drivers keep the taxi with them at their places as Ramesh arrange with them. Only few taxis come in over there for the maintenance, that's it."

And at pp 39-42:

- "Q. Just pardon me one moment. Now, Mr Ghazi – pardon me one moment. Mr Ghazi, are you saying that you didn't know Farooq before you were informed about these proceedings, is that your evidence?
- A. No, I never met him.
- Q. Never met him. So you understand that he was driving taxi 1078 when he was injured, correct?
- A. I don't know he is ... (not transcribable 01:05:53) ... or not, I don't know.
- Q. But you understand that he alleges that he was injured and that's accepted there was an assault when he was driving taxi 1078 in the early hours of the morning, you know that, don't you?
- A. No, I didn't come to know ... (not transcribable 01:06:10) ... Ramesh come to my place with that statement.

- Q. All right. And he'd been driving that taxi – it's a bit hard to know on his evidence, but for at least a month and perhaps six months, okay. I want you to assume that. Can you assume that?
- A. ... (not transcribable 01:06:32) ...
- Q. Now, you would've come across a driver that was driving a taxi that was owned by Mr Tanwar if he'd been driving it from somewhere between one and six months in your role, would you not?
- A. No, because I only knew the day drivers who are ... (not transcribable 01:06:53) ... payments and ... (not transcribable 01:06:56) ... maintenance. ... (not transcribable 01:06:58) ... that's all.
- Q. I see. So you're interesting in who's bringing the taxis in at 3 o'clock in the afternoon but you're not interested in who's taking them out at night, is that what you're saying?
- A. He never come over there, not many come ... (not transcribable 01:07:13) ... keep the taxi his place and West Ryde. Yes, day driver only I know. ... (not transcribable 01:07:20) ... payment, that's all.
- Q. I see. Sorry. So who's Milad?
- A. He is the day driver ... (not transcribable 01:07:34) ...
- Q. I see. So Milad keeps this taxi at his place, is that what - - -
- A. That's correct.
- Q. And Farooq goes and picks up the taxi from Milad's place before he does the night shift, is that right?
- A. I don't know. If Farooq wasn't driving ... (not transcribable 01:07:55) ... must be. I don't know, I didn't meet Farooq.
- Q. But you know that Milad was the day driver for taxi 1078, you knew that back in October 2006, correct?
- A. That was Milad's made the arrangement not me.
- Q. But did you know back in 2006 that Mr Milad was the taxi driver of 1078?
- A. Yes.
- Q. All right. And he used to, I take it, come in and give you some money for the use of that car from time to time?
- A. Yes. Every week he comes for the car maintenance, check everything and drive ... (not transcribable 01:08:46) ...
- Q. And you say that he used to give you that money firstly at Silverwater and then later on he gave it to you at Petersham, is that right?
- A. Yes, Petersham, yes.

- Q. All right. Well, what happened to the taxi at night? You say you have absolutely no idea, is that what you're saying?
- A. Yes, I said that was Milad and other drive Farooq, whatever, that was their arrangement ... (not transcribable 01:09:12) ...
- Q. I see. So what your evidence is, as I understand it, is that Milad arranged for Farooq to drive the taxi at night, is that what you say?
- A. Yes.
- Q. And you have absolutely – you had nothing to do with that - - -
- A. ... (not transcribable 01:09:30) ...
- Q. - - - as the manager of Mr Tanwar's business, correct?
- A. ... (not transcribable 01:09:39) ... I was assisting him.
- Q. Okay. But the point being is that if you had no idea who was driving the taxi at night that Milad was making the arrangements I take it Mr Tanwar would've had no idea as well, correct?
- A. Milad made arrangement, I never – Farooq never came there, never met him... (not transcribable 01:10:02) ...
- Q. All right. Thank you. Now, do you know if Milad in or around October – I withdraw the question. You don't know whether Milad arranged for only Mr Farooq to drive or he could've arranged for anyone to drive at night, correct?
- A. Yes, he can.
- Q. And he paid, I take it, a set amount of money to hire the vehicle for the whole week, is that right?
- A. Yes.”

Correspondence and Taxi Driver Worksheets

175. In a letter dated 20 April 2020, Ms Kate Bryan, operator services of 13CABS, wrote:

“Please be advised that Mr Abdul Hameed Ghazi ceased operating taxi 1078 on the 30th November 2005 in the 13CABS network.”

176. In a letter dated 31 July 2019 from Carters Law Firm to Tanwar Enterprises, notice was given of a claim by Mr Aslam for lump sum compensation for his physical injuries and, in the alternative, for psychological injury as a result of the incident on 21 October 2006. A claim was also made in respect of weekly payments.

177. In a letter dated 20 August 2019, Ms Kaur as manager for Tanwar Enterprises stated that they were not aware and denied any incident on 21 October 2006 with any of their employees.

178. In a letter dated 13 September 2019 from Carters Law Firm to Tanwar Enterprises, Mr Hansen suggested that Ms Kaur consult the first respondent, Ramesh Tanwar, director of Tanwar Enterprises, who was aware of Mr Aslam's claim for compensation arising from an incident on 21 October 2006. Mr Hansen wrote: "Mr Tanwar was a party in previous proceedings at the Workers Compensation Commission where he was represented by Nicholas Vasta & Co, Solicitors." Three taxi driver daily worksheets dated 17-18 October 2006, 18-19 October 2006 and 20-21 October 2006 were attached. Mr Hansen noted that Tanwar Enterprises was named as the "operator or nominated person" on the worksheets. Mr Hansen also noted that the attached worksheets had been annexed to an Application to Admit Late Documents that was filed in the Commission in the earlier proceedings and were served on Nicholas Vasta & Co, Solicitors by letter dated 25 June 2018.
179. The taxi driver daily worksheet for the period 17 October 2006 to 18 October 2006 showed the odometer finish at 490515 and start at 490250. It was noted that the driver's name was Farooq, his driver's licence number was 14877196, and the taxi was T-1078 in the TCS Network. The odometer reading at the start was 490250 and at the finish 490515. On the second page of the sheet there was a stamp with the following words on it: "Tanwar Enterprises Pty Ltd Bella Vista NSW 2153 ABN ...89764134, Mobile: 0412 678 207". The worksheet also had a date stamp, 17.10.2006, next to the stamp.
180. The odometer reading in the taxi driver daily worksheet for the period 18 October 2006 to 19 October 2006 was 490617 at the start and at the finish 490811. The same particulars as to driver's name and taxi were on the front of the sheet with the network being TCS. On the second page the sheet was stamped: "Tanwar Enterprises Pty Ltd" with the same details as before, and a date stamp 18.10.2006. There was a handwritten initial placed over the stamp.
181. In the third of the taxi driver daily worksheets for the period 20 October 2006 to 21 October 2006 the same particulars as to driver's name, licence number, taxicab number and network were set out. The odometer reading at the start was 490987 and there was no figure for the odometer finish. The second page of the sheet is stamped "Tanwar Enterprises Pty Ltd" with the same details as before, and there is a date stamp 20.10.2006 next to it.
182. The taxi driver daily worksheet for the period 17 October 2006 to 18 October 2006 were produced by Mr Aslam as part of the attachments to a letter dated 4 May 2018 from Mr Hansen of Carters Law Firm in response to a Direction for Production addressed to the Mr Aslam and issued by Sparke Helmore Lawyers, the solicitors for the Nominal Insurer.
183. In a letter dated 23 September 2019 to Carters Law Firm, Mr Simons of Remington & Co, Solicitors, advised that he was acting for Tanwar Enterprises. Mr Simons noted that three taxi driver worksheets had been bought to his client's attention and it had been suggested that Tanwar Enterprises was the operator or bailor of the taxi. He wrote:
- "If your client is suggesting Farooq Aslam was an employee of Tanwar Enterprises Pty Ltd this is denied."
184. Mr Simons stated that Tanwar Enterprises did not own or operate the taxi T-1078 in October 2006 and did not bail taxi T-1078 to Mr Aslam on either 17 October 2006, 18 October 2006 or 20 October 2006. He conceded that the ABN of Tanwar Enterprises Pty Ltd on the daily driver worksheet was correct, but neither the signature nor the initial of the stamp had ever been authorised by Tanwar Enterprises, and Tanwar Enterprises had never given authorisation for the applicant to use the stamp on the taxi driver worksheet concerned.

185. In a letter dated 30 September 2019 from Carters Law Firm to Remington & Co, Mr Hanson wrote the following:

“Our client denies engaging any form of fraudulent activity.

We note your email of 24 September 2019 is the first time it has been suggested that the daily driver worksheets relied on by our client are not authentic and authorised by your client. We note the worksheets were served on the solicitors for Ramesh Tanwar, the sole director for Tanwar Enterprises Pty Ltd, on 25 June 2018. Mr Tanwar signed a further statement for use in the workers compensation proceedings on 26 June 2018. The authenticity of the worksheets was not raised in Mr Tanwar’s statement.”

186. Mr Hansen was instructed that at the commencement of each taxi shift, Mr Aslam attended either the BP service station at Silverwater or the home of Ramesh Tanwar at 4 Charlotte Grove, Bella Vista where Mr Aslam would collect the taxi, the keys to the taxi and a “taxi driver daily worksheet”. The worksheets were usually located in the glovebox of the taxi when the taxi was collected and at the time of collection, the back of the worksheets had already been completed, signed, stamped and dated. At the end of each shift Mr Aslam would complete the front of the worksheet and the completed worksheets were returned to Mr Tanwar each week. Mr Hansen noted that Mr Tanwar had stated on a number of occasions that he was the owner of taxi T-1078 and Mr Tanwar was the sole director of the second respondent.

187. Two taxi driver daily worksheets were filed by Mr Aslam as attachments to the AALD dated 27 October 2020. These work sheets were for the driver, Farooq Aslam, and dated 14 June 2007 and 15 June 2007. Each of the sheets under “Signature of operator or nominated person” had a stamp on it which read “25079 Zakynthos Management”. There was an initial next to the stamp, and the date and time were handwritten and read “Date 14/6/07 time 3pm” and “Date 15/6/07 time 3pm”.

188. Two Taxi – Inspection Reports were filed by Mr Tanwar in the AALD. The first report dated 17 July 2006 for taxi T-1078 showed an odometer reading of 221,306 km. The second report dated 6 March 2007 for taxi showed an odometer reading of 310,391 km.

Police Report

189. Constable Warren under Event No: E 28850207 reported the following details:

“The victim in this matter was working as a taxi driver at the time he was assaulted. Both the accused Anthony NGUYEN and Thi NGUYEN were passengers in his taxi.

About 3:45 am on Saturday 21st October 2006, the victim pulled into the kerb on Kent Street, Sydney x Bathurst Street.

At this time, the accused Anthony NGUYEN was seated in the front passenger seat. The accused Thi NGUYEN was seated in the rear left passenger seat. Both accused persons engaged in a verbal argument with the victim over the cab fare and the destination. The argument became heated and the accused Anthony NGUYEN lashed out by grabbing the victim by the scruff off his shirt while the argument took place. This action caused the victim to be pulled towards the accused Anthony NGUYEN. It also caused him a minor amount of discomfort.

Upon seeing this confrontation, the accused Thi NGUYEN removed one of her red stiletto shoes, took hold of it on one of her hands, reached forward into the front section of the taxi, and in a sideways sweeping motion struck the victim in the face with the heel of her stiletto. The heel section of the stiletto harshly connected with the victim's left eye. As a result, the victim's eye bled out, and he suffered a considerable amount of pain.

After this action, the accused Anthony NGUYEN grabbed the accused Thi NGUYEN, and together they fled the taxi. The victim pursued both accused persons onto George Street, where he and several witnesses flagged down patrolling Police.

The aforementioned attack was witnessed by an independent witness. After obtaining a version of the attack, from both this witness and the victim, the accused Anthony NGUYEN and the accused Thi NGUYEN were separately placed under arrest and cautioned.”

MEDICAL EVIDENCE

Physical injuries

190. In a report dated 4 August 2004, Dr Peter Duffy, radiologist, reported on a scan of the right knee, noting that AP and lateral intercondylar radiographs were obtained. He concluded that no radiological bone or joint abnormality was evident.
191. In a report from the Department of Radiology, Concord Repatriation Hospital dated 12 September 2005, Dr Kharana noted that there were no bony or joint lesions seen in relation to the right knee.
192. In a report from the Department of Radiology, Concord Repatriation Hospital dated 28 August 2006 to Dr Walker, Dr Sun reported that the scan showed no bony abnormality identified in the right knee.
193. In the Emergency Department (ED) clinical records of Sydney Hospital dated 21 October 2006, under “presenting problem” Ms Waterman, triage nurse, noted that Mr Aslam was struck in the back of his head and face. Under “nursing assessment data”, Ms Waterman, triage nurse, wrote:

“Taxi driver a/assaulted [sic] and robbed tonight. O/A left orbital contusion and small lac. Beneath left eye swelling noted. Able to open eye. Ice pack applied. No LOC. Police already attended to Pt. He has contacted family by his mobile phone.”
194. Under “Vital Signs”, Ms Waterman recorded the GCS as 14 and noted Mr Aslam could open his eyes to command. She reported that Mr Aslam had been assaulted by two people and punched and struck by the heel of a shoe in the left area of the face. She reported that there were injuries to the neck, left eye, left orbit, shoulders and that the upper C-spine was tender from the neck. Ms Waterman noted that the police were enquiring about the injuries as they were charging “two others”.
195. In the clinical records under “communication with Police” the following was listed:
 - “1. Forehead horizontal abrasion, 5cm – minor
 2. Left eye minor injury to pupil/distorted – minor
 3. 2cm laceration, horizontal, below left eye – mild – needs sutures
 4. Tender contusion below left eye – still assessing needs imaging and consultation etc.
 5. Horizontal contusion right supraclavicular – minor
 6. Left supraclavicular abrasion and contusion – minor
 7. Tender top of neck – still assessing – minor – needs x-rays
 8. Tenderness / no contusion above both scapulae (shoulder blades) – still assessing – need x-rays.”

196. Ms Waterman noted that Constable Heidi Warren wished to discuss the assault in order to determine the charges.
197. Under "treatment" staff noted that precautions were taken in respect of the C-spine with a hard collar or the applicant lying flat, there were to be x-rays and medications given were listed as Panadol (previously). A CT scan was to be performed in respect of the left orbit, and sutures required removal in five days. Staff noted that that the applicant did not want to stay in hospital nor wait for specialist report.
198. In a scan dated 21 October 2006 from Dr Hazan, at the Radiology Department in Sydney Hospital, a CT scan of the left orbit and face was noted to show soft tissue swelling present on the left side but no distinct evidence of bony fracture. There were some mild mucosal changes seen within the maxillary antra bilaterally which did not appear to be related to the underlying trauma. It was noted that the possibility of injury to the globe may need to be considered in the appropriate setting.
199. In a scan of the cervical spine dated 21 October 2006, Dr Hazan reported:
- "The intervertebral disc space, the vertebral bodies and posterior elements do not demonstrate any significant changes. Please correlate with clinical features."
200. In the Patient Health Care Record of the Ambulance Service of NSW dated 21 October 2006, it was noted that Mr Aslam was taken to Sydney Hospital. Under "chief complaint" and "patient / incident history" the following was written:
- "Assault – eye injury.
- 30yr taxi driver assaulted from behind as he sat in driver's seat. Unknown if assaulted with fist or weapon (? shoe) ... swelling and bleeding from left eye. Vision blurred from left eye. GCS 15. Well ... also complained some tenderness to shoulders...administered 10mg Maxolon prophylactically."
201. In a report dated 15 January 2007, Dr Grahame Mahony, orthopaedic surgeon, noted that Mr Aslam had sustained an injury to his right knee while working as a warehouse manager in April 2004. Following that injury, Mr Aslam was off work for two months and underwent an arthroscopy of the right knee on 28 April 2005. Mr Aslam told Dr Mahony that the arthroscopy did not help to improve his right knee symptoms and further surgery had been recommended. Mr Aslam said that following the surgery on 28 April 2005 he was off work for four-six months and then returned to work for a few days and was told that work was no longer available. Dr Mahony noted that Mr Aslam started work as a taxi driver in 2005.
202. Dr Mahony noted that on 20 October 2006 (sic), while working as a taxi driver, Mr Aslam had a male and female passenger in the back seat of his taxi cab and the man hit him several times. Mr Aslam sustained a laceration to the lower mid-forehead, a laceration below the left eye, an injury to his neck with a laceration to the back of the neck, injuries to both shoulders as he was hit on several occasions, and a worsening of the right knee symptoms. Dr Mahony reported that Mr Aslam did not sustain any injury to his back at the time. Dr Mahoney reported that Mr Aslam had chased the assailants and grabbed the man by the upper portion of his shirt on his left hand. Mr Aslam said that he was then assaulted again, adding injuries to his abdomen and both legs, and his previous symptoms became worse. He noted that Mr Aslam was taken by ambulance to Sydney Hospital and the laceration below the left eye was sutured. Dr Mahony noted that Mr Aslam was initially off work for about one month and following that he was only able to work for about four days as he had difficulty with driving.
203. Dr Mahony noted the present complaints included occasional pain below the left eye, a discharge from the left eye, pain in the back of the neck which radiated to the occipital area and to the shoulders and right upper arm but not to the remainder of the upper limbs, a discharge from his nose and pain in the right knee.

204. On examination, Dr Mahoney noted that lateral flexion of the neck was within normal limits and the remaining movements appeared restricted in the extremes. He reported that shoulder movements were within normal limits, and no abnormality of significance could be detected on examination of the remainder of the upper limbs. In regard to the back, Dr Mahony noted that spinal movements were possible in flexion with the fingertips reaching the knee levels which were restricted because of the pain in the neck. Remaining movements in the back were within normal limits. In respect of the right knee there was a complaint of tenderness on palpating the medial articular margin of the patella and the medial joint line. Knee movements were from extension to a few degrees short of full flexion and crepitus was noted. Dr Mahony noted that Mr Aslam underwent a CT scan of the left orbit and face on 21 October 2006 and an x-ray of the cervical spine on 21 October 2006.
205. Dr Mahony expressed the opinion that Mr Aslam had developed symptoms referable to chondromalacia of the right patella and there was evidence of degenerative changes. He considered it consistent that the incident he described in June 2004 produced such lesions. With regard to the assault on 20 October 2006 (sic), Dr Mahony considered it was consistent that the assault described had produced a laceration to the lower mid-forehead, a laceration below the left eyelid which required sutures, and a laceration to the back of the neck. Dr Mahony noted that Mr Aslam had symptoms referable to a cervical strain with nerve root irritation radiating to the shoulders and an upper portion of his right upper limb as well as injuries to his abdomen but appeared to have made a full recovery with regard to the laceration to his forehead and abdomen. He recommended that Mr Aslam see an ear, nose and throat specialist in regard to nasal problems, and an eye surgeon in regard to his left eye problems.
206. In a report dated 15 January 2007, Dr Mahony made an assessment of 12% whole person impairment (WPI) of the right lower extremity as a result of the injury in June 2004.
207. In a report dated 3 December 2007, Dr Mahony assessed 5% WPI for scarring to the face and left knee, 5% WPI of the cervical spine and 12% WPI of the right lower extremity, which resulted in a total WPI of 21% arising from the assault on 21 October 2006. I note that Dr Mahony did not make any deduction for pre-existing changes (despite having just assessed in a report dated 15 January 2007 12% WPI of the right lower extremity in relation to the incident in June 2004).
208. In a report dated 15 January 2008, Dr Mahony noted he had re-examined Mr Aslam. He reported that Mr Aslam had ceased working as a taxi driver for Lime Taxis on 22 November 2007. He noted he had seen an ear, nose and throat surgeon at Concord Hospital and had been treated with eye drops. Under "present complaints", Dr Mahony noted that Mr Aslam still had an occasional discharge from the left eye and a reddening of the eye, he still had pain in the back of his neck which radiated to the shoulders and right upper arm, and still had pain in his right knee. Dr Mahony expressed the opinion that Mr Aslam had symptoms referable to chondromalacia of the right patella and there was evidence of degenerative changes. However, he considered that these lesions had been produced by the injury sustained in June 2004. In respect of the assault on 20 October 2006 (sic), Dr Mahony expressed the view that Mr Aslam had sustained a laceration to the lower mid-forehead, a laceration below the left eyelid which required sutures, and a laceration to the back of the neck. Mr Aslam had also developed symptoms referable to cervical strain with nerve root irritation radiating to the shoulders and the upper portion of his right upper limb.
209. In a second report dated 15 January 2008, Dr Mahony made an assessment of WPI, namely 5% WPI for scarring to the face and left knee, 5% WPI for cervical spine and 12% WPI of the right lower extremity (a total of 21% WPI). He made no deduction for pre-existing change.
210. In a third report dated 15 January 2008 Dr Mahony made an assessment of 14% WPI, namely 8% WPI cervical spine and 6% WPI of the right lower extremity in respect of the injuries sustained in 2004 while working in the warehouse for Bilal Brothers.

211. In a report dated 22 July 2008, Dr Mahony noted that he had assessed 8% WPI of the right knee in respect of Mr Aslam's injury at Bilal Brothers in 2004. Dr Mahony wrote:

"It is my understanding in regard to the assault he described while working for Ramesh Tanwar is that he sustained a further injury to his right knee as well as a laceration to his lower mid-forehead, a laceration to below his left knee, an injury to his neck as well as a laceration to the back of his neck, and injuries to both shoulders."

212. In a report dated 4 June 2007, Dr Jin Haddad, general practitioner, noted that Mr Aslam first attended his surgery on 24 January 2004, complaining of medial right knee pain. He noted that the cause of this was most likely due to his job which involved considerable lifting of weights. Dr Haddad said he referred him to Dr Walker who carried out an arthroscopy of the right knee on 28 April 2006. He noted that despite the resection of the medial meniscus, Mr Aslam's knee pain continued and he was referred back to Dr Walker. Dr Haddad noted that Mr Aslam continued to suffer from right knee pain which over time would worsen to the point here he would require further knee surgery.

213. Dr Haddad stated that in respect of the assault on 20 October 2006 (sic), Mr Aslam presented to him on 27 October 2006 needing removal of sutures from the left lower eyelid (3 x 5/0). Dr Haddad wrote:

"He had multiple bruising elsewhere on his body and was complaining of headache and back pain. Bruising and swelling was on his head, around his neck and shoulders and his limbs. He was unfit for work from 21 October 2006 to 22 November 2006."

214. In a report dated 16 March 2012, Dr Haddad stated that in relation to the assault on 21 October 2006, Mr Aslam first consulted him on 27 October 2006. On examination, the applicant had evidence of a sutured laceration to his left lower eyelid, plus bruising and abrasions on his back, face, occiput, limbs, neck and shoulders. Dr Haddad wrote:

"It was clear that he had received a severe bashing consistent with the date of assault on 21 October 2006. He consulted Dr Ishrat Ali (consultant psychiatrist) on 28 February 2011 who diagnosed post-traumatic stress disorder. He considered that this condition would impact on the applicant's ability to work by way of episodic exacerbations that could last for months affecting his ability to concentrate and cause him fatigue."

215. In a report dated 5 September 2007, Professor Ali Raza Hashmi, of the Department of Orthopaedic Surgery at Lahore General Hospital, noted that Mr Aslam complained of severe back ache, neck and shoulder and right knee injuries. He noted that Mr Aslam was assaulted when working as a taxi driver on 21 October 2006 and sustained "multiple injuries right knee, neck, shoulder, back and face". Professor Hashmi believed that all the injuries were sequelae to the assault on 21 October 2006. There was no reference to the earlier knee injury in 2004 in this report.

216. In a report dated 26 May 2008 from the Department of Orthopaedic Surgery at Lahore General Hospital, it was noted that Mr Aslam had been assaulted when working as a taxi driver in Sydney, Australia and was hit by passengers on his neck, back and right knee.

217. In a report dated 8 December 2008 Dr John Bentivoglio, consultant orthopaedic surgeon, noted that on 21 October 2006 Mr Aslam was hit from behind by a passenger and sustained an injury to his neck and left side of his face. He reported that Mr Aslam gave a history of trying to give chase but was "re-assaulted" by the person and had "an injury to his right knee and left groin area". He noted that Mr Aslam had said he had injured his right knee in the past in a work accident and underwent an arthroscopy in the right knee region.

218. Dr Bentivoglio noted that Mr Aslam was taken to Sydney Hospital by ambulance following the incident. He noted the eye laceration was sutured and he was later allowed to go home. Mr Aslam then made an appointment to see his local doctor, Dr Haddad.
219. Dr Bentivoglio stated that the neck was the area that troubled Mr Aslam most of all, with pain that radiated to the base of his skull and inter scapular region. He noted that the applicant found certain movements gave rise to pain over the meniscal aspect of the right knee, particularly bending the knee. On examination, Dr Bentivoglio noted Mr Aslam had a full range of movement in the cervical spine region and there was no localising motor sensory or reflex abnormality in the upper limbs. He noted there was no muscle wasting in the right thigh and there was a full range of movement present in the right knee and alignment of the right knee was normal. He reported that the patella tracked normally, although there was a minor clicking sensation in both patellae when bending to about 100 degrees. He reported there was no joint line tenderness.
220. Dr Bentivoglio expressed the opinion that Mr Aslam sustained a laceration in the region of his left eye in the incident described which had healed uneventfully and would not cause any long-term problems. He considered that Mr Aslam had probably sustained at least a musculo-ligamentous strain of his cervical spine in the incident, but there was no evidence of any nerve irritation or compression to suggest he would benefit from any aggressive form of treatment. He was of the view that the neck symptoms would settle in time. In relation to the right knee, Dr Bentivoglio considered there was no evidence of any ongoing disability in the right knee, and any disability present would relate to the previous injury and the arthroscopy in 2005.
221. Dr Bentivoglio considered that there had been an aggravation caused to a pre-existing abnormality present in the right knee based on the history provided by Mr Aslam as well as physical examination. He considered there had been a musculo-ligamentous strain in the cervical spine region and a soft tissue injury to the left groin, and laceration to the left eye region. Dr Bentivoglio concluded that the cause of the right knee symptoms related to the previous injury in 2005. He considered Mr Aslam was capable of performing his full pre-injury duties and had fully recovered from any injury attributable to the incident in October 2006.
222. In a report dated 10 January 2013, Professor's Nadem's Registrar at the Services Institute of Medical Sciences in Lahore, certified Mr Aslam as suffering from severe backache and right knee injury pain from the incident in 2016 when he was working as a taxi driver.
223. In a report dated 10 October 2016, Dr Patrick, general surgeon, described Mr Aslam as a somewhat poor historian. He noted that subsequent to the assault in October 2006, Mr Aslam said he had been troubled by significant ongoing symptoms and was quick to anger. He reported Mr Aslam had been troubled by pain virtually continuously at his neck and back, as well as headache and pain about the left eye and with his right knee also having been aggravated.
224. Dr Patrick described the nature of the injury on 21 October 2006 as being an "assault while working as a taxi driver sustaining injuries predominantly to the head, neck, back and right and left shoulders, and with aggravation to earlier right knee injury".
225. Dr Patrick noted the assault occurred in the early hours of the morning of 21 October 2006, probably at about 3.30 am. Mr Aslam had been about to finish up his shift and was in Liverpool Street in Sydney when he picked up two passengers for a short trip within the city. Dr Patrick said the passengers, a man and a woman, were in the back seat and they tried to grab his money bag and then physically attacked him. Dr Patrick wrote:

"He was being punched severely and he was being punched about the left side of his head and face and the man was using something hard, whacking him about the shoulders quite viciously. He was hit on the head and back multiple times.

He was bleeding from the left eye region. A gold chain was grabbed from his neck and they grabbed cash from his coat pocket. They were then running away. He kept yelling out and the man came back and was hitting him again. He collapsed and fell to the ground he believes. Although it was early in the morning there were a number of people there and they grabbed the assailants.”

226. Dr Patrick noted Mr Aslam was taken by ambulance to Sydney Hospital and at Sydney Hospital an infraorbital skin laceration was attended to and “he was complaining of aggravation to his right knee”. He noted there were small lacerations to the back of the neck and forehead not requiring suturing and there was some complaint of neck pain, back pain and pain at both shoulders. Mr Aslam believed that he was then completely off work for eight or nine months and was seen by his GP, Dr Haddad of West Ryde.
227. Dr Patrick noted that the back pain was chronic and there were ongoing symptoms of the neck and shoulders as well as right knee. He reported that Mr Aslam was referred to see Dr Ishrat Ali, psychiatrist, who initially saw him on 28 February 2011. He noted that after returning from Vancouver, Canada in early 2007 Mr Aslam was attempting to work with Lime Taxis but finished there in November 2007. Mr Aslam told Dr Patrick that he also went to Pakistan in early 2015 between January and March as his sister was unwell. Mr Aslam said he saw a number of doctors in Pakistan. Mr Aslam was also in Pakistan in about May 2008 and January 2013.
228. Dr Patrick noted that Mr Aslam was born in Pakistan and migrated to Australia in 2004. He noted he commenced taxi driving work in 2005/2006. Dr Patrick reported that there was a prior history of injury to the right knee in about June 2004 when Mr Aslam was working as a warehouse manager with Bilal Brother Technologies.
229. Dr Patrick formed the view that Mr Aslam continued now with significant ongoing symptoms consequent upon the injuries sustained at the time of his assault on 21 October 2006. Dr Patrick stated Mr Aslam was aware of ongoing psychiatric problems, ongoing neck pain and stiffness, continuing back pain which was more at the lumbar region of the spine, ongoing pain and stiffness in the shoulders, an aggravation of the right knee and pain at the left chest wall. He reported that Mr Aslam continued on medication including Panadol Osteo, Panadeine Forte, Nurofen and Zolofl.
230. On examination of the cervical spine, Dr Patrick reported that there was muscle guarding evident, flexion was 20% of expected, extension nil, lateral rotation to the right 10% and to the left 5% of expected with the neck held stiffly. He reported there was demonstrable muscle guarding at the lumbar spine paravertebrally and the lumbar spine was stiff. Mr Aslam could flex achieving fingertips to knees only, extension just 10% of expected, and lateral flexion to the right 40% and to the left 60% of expected.
231. Dr Patrick noted that there was a small scar about the left knee which Mr Aslam told him related to a shotgun wound in Pakistan in possibly August last year but Mr Aslam was unsure of the dates and this had resulted just in the need for very minor surgery. Dr Patrick noted that the range of active movement of both right and left shoulders was considerably restricted, but he believed not assessable in terms of measuring active range of motion because of inconsistencies in the findings both right and left. In relation to the right knee, there was 6 degrees flexion contracture with range of active motion 6-130 degrees of flexion. There was increased patello-femoral crepitus at both the right and left knees.
232. Dr Patrick expressed the opinion that Mr Aslam had sustained significant injuries as a consequence of a somewhat prolonged assault when he was completing his taxi cab shift in the early morning of 21 October 2006. He noted Mr Aslam was punched and hit in the head, face, shoulders and back multiple times, and had fallen to the ground at some stage. He considered there may have been some aggravation to his previously operated right knee as

described, and there had clearly been both physical and psychological sequelae to this assault while working. Dr Patrick believed that as a consequence of the assault Mr Aslam sustained likely ligamentous/cervical zygapophyseal joint injury at the cervical spine with disc injury not excluded, and likely facet joint injury at the lumbo-sacral spine, again with intervertebral disc injury not excluded. He considered there had been some direct trauma/contusional injuries around the shoulders, but there was no definite demonstrable pathology clinically, and the range of active motion was somewhat inconsistent.

233. Dr Patrick believed that Mr Aslam as he presented was incapacitated for his pre-injury work as a taxi driver and effectively totally and permanently disabled for work. He noted he was on a disability pension with his new wife as his carer.

234. Dr Patrick assessed 11% WPI, comprising 6% WPI of the cervical spine, 0% WPI of the thoracic spine and 5% WPI of the lumbar spine. Dr Patrick wrote:

“There is no clear evidence that there has been significant ongoing assault related aggravation to the previously operated right knee and the shoulders are not assessable clinically.”

235. In a report dated 4 August 2017, Dr Roger Rowe, consultant orthopaedic surgeon, noted that Mr Aslam stated that on 21 October 2006 in the course of his employment as a taxi driver, he was assaulted while he was in the driver's seat and was struck on the neck, back and shoulders as his assailants tried to rob him of cash and a gold necklace. Mr Aslam said he was also hit on the face. Dr Rowe noted that Mr Aslam said he got out of the car and was upset and crying and was then bashed on the right leg by his assailants. Mr Aslam was transported by ambulance to Sydney Hospital, where x-rays excluded any fracture. Mr Aslam was prescribed medication for pain relief and given some sutures in the left eye region and discharged home the following morning. Mr Aslam then consulted his GP, Dr Haddad, and later a GP, Dr Prasad. Dr Rowe noted that Mr Aslam said he had returned to his home country of Pakistan on a few occasions since the assault and remained in Pakistan for one or two months on each occasion. Mr Aslam said that while in Pakistan he attended physiotherapy, which was of no benefit.

236. Dr Rowe noted that Mr Aslam remained under the care of his GP, Dr Prasad, and was also under the care of Dr Ali, psychiatrist, and attended a psychologist at Fairfield.

237. Dr Rowe noted that Mr Aslam said that after the assault he worked on and off for five years until 2011 when he ceased work. Dr Rowe wrote:

“He further explained that even whilst working he would only complete 20 or 30 days of work per year during this period. He said that his marked limitation of work was the result of psychological factors, anger and aches everywhere. He said that he is on the disability support pension now and that his wife is his official carer and thus receives the carer's pension.”

238. Dr Rowe noted there had been a previous injury to the right knee in about 2004 or 2005 while Mr Aslam was working as a warehouse manager. Dr Rowe noted that Mr Aslam mentioned that he had a gunshot wound in the left knee region when in Pakistan, which required surgical treatment.

239. Dr Rowe noted that Mr Aslam stated that he had an ache in the neck and lower back, which was constantly present at all times, a stinging feeling in the spine, restriction of movement in the spine due to pain, and tingling down the whole of the arms and legs. On examination Dr Rowe noted that Mr Aslam used a walking stick in his right hand and walked with an exaggerated right-sided limp. He reported that examination of the neck revealed over-reaction to light touch all over the neck, no localised tenderness and no muscle spasm.

He noted that Mr Aslam demonstrated zero movement of the neck from the neutral position, which was at variance from his movements during the history taking. He reported there was no neurological deficit. In respect of the lumbar spine, Dr Rowe reported that examination revealed the ache to be sited all over the lumbar spine and there was again over-reactivity to touch. Dr Rowe reported there was no localised tenderness and no evidence of muscle spasm. He reported that Mr Aslam demonstrated zero movement from the neutral position and straight leg raising was tested in the sitting position and was equivalent of 70 degrees bilaterally. Reflexes were also normal. Dr Rowe reported that there was no medical imaging available in regard to the lumbar spine and the x-ray of the cervical spine date 21 October 2006 indicated no abnormality.

240. Dr Rowe concluded that Mr Aslam may have sustained bruising and strain in the region of the neck and low back as a result of the assault in October 2006, but there was no evidence of any residual pathology in that regard. He considered that the current presentation with regard to the cervical and lumbar spine was that of non-organic factors only. Dr Rowe considered that initially employment was a substantial contributing factor but there was no clinical evidence of any explanatory spinal pathology at this stage, and his presentation was a reflection of non-organic factors. Dr Rowe concluded that from the point of view of the cervical and lumbar spine, Mr Aslam was probably fit for pre-injury duty but given his overall presentation it was unlikely he would return to the workforce in any capacity.
241. In a second report dated 4 August 2017, Dr Rowe stated that there was no assessable impairment in regard to the cervical or lumbar spine, and he classified Mr Aslam as DRE cervical category 1 and DRE lumbar category 1. He concluded that there was 0% WPI in regard to any cervical spine or lumbar spine injury as a result of the assault on 21 August 2006.
242. In a report dated 9 March 2012, Dr Simonil Bhavnagri, GP, noted that Mr Aslam first presented to Delwood Medical Centre on 20 September 2011. Dr Bhavnagri reported that the details of the work related injuries in 2004 and the assault in 2006 arise from medical records that Mr Aslam had provided. It was noted that in June 2004 while working as a warehouse manager for Bilal Brothers, Mr Aslam injured his right knee. He noted he was referred by his GP, Dr Haddad, to Dr Walker, orthopaedic surgeon. He reported an arthroscopy was performed on the right knee on 28 April 2006 which showed a large parrot beak medial meniscus tear which he resected. He noted that Mr Aslam's knee pain continued and he was referred back to Dr Walker who concluded that the knee pain was due to pressure in the area where the meniscus was removed. Dr Bhavnagri noted that since he had started to see Mr Aslam, he continued to suffer from pain in the right knee requiring regular treatment with pain killers. Dr Bhavnagri noted that on 21 October while working as a taxi driver, Mr Aslam was assaulted by a male and female passenger in the back seat. He reported the male passenger had hit him and he sustained a laceration to the lower mid-forehead, a laceration below the left eye which required suturing in hospital, a laceration to the back of the neck, injuries to both shoulders, worsening of his right knee symptoms and abdomen and leg injuries.
243. Dr Bhavnagri stated that Mr Aslam was diagnosed with a cervical nerve root strain due to the assault, with nerve root irritation causing pain, radiating to the shoulders and upper portion of the right upper limb. He noted that following the assault, Mr Aslam suffered post-traumatic stress disorder with associated depressive features, and the assault directly caused that condition. Dr Bhavnagri said he had documentation of the applicant being diagnosed with this condition on 17 August 2009 by Dr Dinnen, psychiatrist. He noted Mr Aslam still suffered from ongoing symptoms including flashbacks, memory loss, depressed mood and insomnia, and this had severely impacted his social functioning and ability to work to the extent he was currently pursuing support from Centrelink. Dr Bhavnagri noted that the injuries had significantly impacted on Mr Aslam's ability to work but considered he was not qualified to provide an opinion as to whether there was any work for which Mr Aslam was fit and what type of work that would be.

244. In a report dated 5 October 2016, Dr Lalita Prasad confirmed that Mr Aslam had been a patient of the practice since 2011 and suffered from post-traumatic stress disorder. She reported he also suffered from sleep apnoea and had chronic pain in the right knee from work related injuries. She reported he was on a waiting list for a right total knee replacement and mobilised with a stick due to these injuries. Mr Aslam said that his wife was his carer but she had two children and was pregnant with her third child and required assistance. Dr Prasad noted that Mr Aslam was requesting that his sister be able to come over from Pakistan to help care for him and he would require continuing care for over two years. Dr Prasad noticed his condition was more likely to be permanent regarding his chronic pain and psychiatric problems and that he was on a permanent disability pension.
245. In a report dated 29 December 2016, Dr JE Carroll conducted a Medical Visa Services examination of Mr Aslam. Dr Carroll reported that various medical reports were available at the time of this assessment and two previous assessments including a report by Dr Eleanor Haughton, Orthopaedic Registrar from Westmead Hospital dated 2 April 2015 and an x-ray of the left lower leg from Westmead Hospital dated 2 March 2015.
246. Dr Carroll noted that Mr Aslam had the following medical conditions that might impact on his ability to self-care: post-traumatic stress disorder, chronic neck and back pain, right knee medial meniscus tear, left lower limb gunshot injury and bilateral shoulder pain. Dr Carroll noted in Table 3 under “conditions impacting lower limbs” the following:
- “Left lower limb gunshot injury: Mr Farooq sustained a tibial and fibular fracture in October 2014 from a gunshot injury in Pakistan. This was treated with a tibial nail which was removed 4 months later due to infection. He completed a 2 week course of antibiotics at that time. A report by Dr Eleanor Haughton (orthopaedic registrar), dated 2/04/2015 stated that there was no sign of infection and the bone was healing. Mr Farooq reported ongoing pain and stiffness in his left leg, knee and ankle joint.”
247. Dr Carroll noted:
- “Mr Farooq sustained a work related right knee injury in 2004 while working as a warehouse manager for Bilal Brothers Technologies. He reported that a heavy box fell on his right knee and resulted in a medial meniscus tear. He had a partial medial menisectomy for a large parrot beak tear with Dr Peter Walker in 2005. However, he still suffers from an ongoing right knee pain, stiffness and difficulty straightening the knee. Mr Farooq stated that his right knee pain was aggravated in the assault in 2005...”
248. Dr Carroll also noted Mr Farooq sustained bilateral shoulder injury in the physical assault in 2006 and had long standing multiple injuries to his back and neck due to the assault in 2006. He reported that Mr Farooq was diagnosed to have post-traumatic stress disorder in 2006 following a robbery experienced while working as a taxi driver. He noted he required regular follow up with Dr Ali and a psychologist, Deborah Starr, and had been on multiple anti-depressants and was currently on Zoloft.
249. Dr Carroll noted that the examination had been completed on 10 November 2016 by Dr Tigist Belay. He noted that at the time of the assessment it was considered that the right knee injury was not permanent and fully treated, but the provided reports suggested that the state of the knee was unlikely to improve further. Under the diagnoses in the table for the assessment of work related impairment for disability support pension, the lower limbs were listed as left leg gunshot injury and right knee irreparable.

Psychiatric injury

250. Dr Capt. Muhammad Anwar, psychiatrist from the DMS Govt Mental Hospital in Lahore, in a medical certificate dated 7 September 2007, certified that Mr Aslam was suffering from post-traumatic stress disorder. He noted that Mr Aslam had been assaulted during work as a taxi driver in Australia in 2006.
251. Dr Anwar in a medical certificate dated 18 March 2013, certified that Mr Aslam suffered from post-traumatic stress disorder, headache and serious back ache problem, and remained under his care during his stay in Pakistan. Dr Anwar stated that Mr Aslam suffered from a disease of post-traumatic disorder, headache and back pain as a result of robbery in taxi during working overseas in Australia.
252. In a medical certificate dated 25 May 2015, Dr Anwar certified that Mr Aslam was suffering from post-traumatic stress disorder, headache and serious back ache problem. He stated that he had treated the applicant during his stay in Pakistan. Dr Anwar noted that Mr Aslam complained of symptoms of sleeplessness, depressed and angry mood, irritability, manic depression and loss of memory.
253. In a report dated 17 August 2009 to the Director, Victim Services, Dr Anthony Dinnen, consultant psychiatrist, noted that Mr Aslam arrived in Australia in 2004 and started work as a taxi driver about three years ago. He stated that there was no history of exposure to significant stressors other than a work injury to the right knee some years ago.
254. Dr Dinnen stated that Mr Aslam said he was driving a taxi for Combined Taxis on the end of an afternoon shift from 3pm to 3am on 21 October 2006. Dr Dinnen wrote:

“Two passengers got into the taxi in Liverpool Street in the city... the woman tried to take his money bag from him. Both passengers were sitting behind him. He believed they saw him give cash from his money bag to a previous customer when they hailed him.

The money bag was attached to the brake and was secure. He stopped the taxi. The woman hit him with something on the left side of the face, on the eye. Then the man started hitting him with something on the head, back and shoulder ‘too many times’.

Blood started coming from his eye. He fell on the seat. The male passenger tried to take the bag unsuccessfully. He pulled a gold chain from the patient’s neck and took cash from his jacket pocket. He then opened the door and tried to get out when he saw the patient bleeding...

The man and woman then ran. He tried to chase him. He was crying out ...he yelled for the police to be called. People stopped the man and woman.

When he was chasing them, the man came back towards him and hit him again. He hit him with his hands and his feet. In the process of being assaulted his wife’s [sic] knee was injured.

When the police arrived he had fallen down completely. Someone put ice on his eye. He was taken to Sydney Hospital.”

255. Dr Dinnen stated that the police came to the hospital to give him the keys to the taxi and he gave them to the owner on the second day. Dr Dinnen wrote:

“In the hospital the applicant was found to have a problem with his left eye and to have an injury to his knee.

He was off work for 7 to 8 months. The eye was very red. It felt very itchy. His knee was very sore. He was receiving Centrelink payments. He received no money from workers compensation and the claim was still pending.”

256. Dr Dinnen noted from the documentation that Mr Aslam previously had a problem with his right knee and asked Mr Aslam about that. Dr Dinnen said Mr Aslam seemed uncertain but eventually agreed that was the case that he had had an operation on the knee prior to the assault in the taxi. Dr Dinnen said that later Mr Aslam said he had injured his right knee at work when he was working in the computer job at Auburn.
257. Mr Aslam told Dr Dinnen that he was unable to sleep, and sometimes when he slept started shivering. Mr Aslam said he felt very bad because he had dreams about dangerous events and could get jumpy in his sleep. Mr Aslam said that he continued to have pain in his shoulders, head and neck and ongoing pain and pain and impairment of function in the right knee. Mr Aslam said sometimes his mind went very blank and he was not able to listen to anything and this happened about three times a week on average. Mr Aslam stated that he had lost his knowledge and memory and since the assault had become very angry at times with customers which had led to a number of complaints. He told Dr Dinnen that he was always apprehensive and fearful that he might be attacked again. Mr Aslam said he was constantly apprehensive about Asian passengers, particularly young people who did not pay and ran away. He told Dr Dinnen that he could no longer use “his knowledge” when he was driving and had to rely on a GPS because he was forgetful. Mr Aslam said that he frequently felt despairing and desperate and at times cried, particularly when he felt very bad.
258. Dr Dinnen noted that Mr Aslam had some counselling from a social worker at Centrelink on two occasions but no other counselling or treatment. Mr Aslam reported that there were ongoing problems in the family relationship and his wife had threatened to separate from him last year because he was so angry and rude. Mr Aslam stated he returned to work as a taxi driver about seven or eight months after the assault and was now working the same shifts as previously, five shifts a week from 3.00 pm to 3.00 am Monday to Friday. Dr Dinnen referred to the reports of Dr Mahony of January 2007, December 2007 and January 2008 and the hospital records from the Emergency Department of Sydney Hospital and noted they were consistent with Mr Aslam’s account. He also noted a letter from Dr Haddad dated 4 June 2007. Dr Dinnen made a diagnosis of chronic post-traumatic stress disorder with associated depressive features and classified it as moderately severe. He considered the condition was stable and continued to impair functioning as described in his report.
259. In a report dated 8 March 2011 Dr Yasantha Wijeratne, GP, noted that Mr Aslam was a regular patient at Granville Bridge Medical Centre. She reported that he had a history of post-traumatic stress disorder/depression and associated memory loss and there appeared to be several incidents involving memory loss.
260. In a report dated 8 March 2012, Dr Ishrat Ali, treating psychiatrist, noted that he had first seen Mr Aslam on 28 February 2011. He reported that Mr Aslam injured his right knee in June 2004 when working for Bilal Brothers Pty Ltd and was then assaulted while driving a taxi on 21 October 2006. Dr Ali said that when he first saw Mr Aslam he presented with anxiety, depressed mood, insomnia, irritability, poor concentration, difficulty in relaxing, dreams and flashbacks.
261. Dr Ali stated that when he first saw Mr Aslam, he performed a mental state examination and noted that there was evidence of anxiety and depressive symptoms, evidence of dreams and flashback, but no evidence of auditory or visual hallucination, delusional ideas or thought disorder. He noted that Mr Aslam had difficulty in concentrating, but there was no evidence of deterioration of memory or orientation. He considered Mr Aslam was functioning at an average level of intelligence and had reasonable insight into his condition. Dr Ali considered that there was evidence of anxiety and depressive symptoms. He was of the view that there was no evidence of psychosis.

262. Dr Ali noted that when he first saw Mr Aslam he was on Zoloft and he increased this medication to 100 mg and this had continued. He reported there had only been a slight improvement as a result of the anti-depressants. Dr Ali noted that the injuries, including the injury to the right knee in 2004, had made it very difficult for Mr Aslam to work and he was currently not fit to work and this would last indefinitely. He considered that in the future Mr Aslam would be able to work light duties on a part time basis only. Dr Ali made an assessment of 20% WPI. Dr Ali considered that the disability resulting from the assault was 5% and there was a 15% disability as a result of the injury at work in 2004 and subsequent problems in his employment with Bilal Brothers.
263. In a report dated 27 May 2015, Dr Ali noted that he initially saw Mr Aslam on 28 February 2011 when the applicant had symptoms of post-traumatic stress disorder. He noted that the cause was a robbery incident while driving a taxi.
264. In a report dated 23 September 2016, Dr Ali noted that Mr Aslam had been his patient since 2011. He reported that the applicant suffered from a chronic post-traumatic stress disorder and had symptoms of anxiety, agitation, depressed mood, sleep difficult, tiredness, poor concentration, dreams and flashback. He noted that Mr Aslam was taking anti-depressants and was currently on Zoloft 100 mg a day. He noted that Mr Aslam also had multiple medical problems including a work related injury to the right knee. Dr Ali considered that Mr Aslam needed help in bathing, dressing and other activities of daily living and would need continuing care for over two years. He recommended that a visa be granted to Mr Aslam's sister to come to Australia and look after him.
265. In a report dated 5 October 2016, Dr Ali stated that he wished to add to his previous reports concerning Mr Aslam that he had post-traumatic stress disorder symptoms which had been lasting for at least two to three years.
266. In a report dated 6 May 2019, Dr Ali stated that he had reviewed Mr Aslam on 19 April 2019 and noted he was on Zoloft 50 mg daily and Avanza 30 mg 1/2 night. He reported that Mr Aslam had depressed mood, sleep difficulties, tiredness, poor concentration, dreams and flashbacks. He noted this was a post-traumatic stress disorder. He reported that Mr Aslam also had problems with his back.
267. In a report dated 6 December 2016, Dr Klaas Akkerman, psychiatrist, noted he examined Mr Aslam on 5 December 2016. He noted that Mr Aslam was injured on 21 October 2006 when working as a taxi driver and while he was being robbed by two or three men in an armed robbery. He reported they stole his money and his belongings and were caught and subsequently convicted. Dr Akkerman wrote:
- "Physically he hurt his neck, back, head, face, knee and shoulders. He has ongoing problems with this. The treatment he has for this is Panadol and Panadol Osteo."
268. He noted that Mr Aslam had not worked since. Dr Akkerman noted that Mr Aslam had been seeing Dr Ali, psychiatrist, since 2011 every month and this was ongoing. He reported he took 100 mg of Zoloft at night and one Endep at night.
269. On mental status examination, Dr Akkerman reported that Mr Aslam was unshaven, walked with a stick, and his mood was depressed, with similar affect. He reported concentration was down and short-term memory was down. Mr Aslam was irritable and somewhat tearful and became visibly upset when he described the incident. He noted that Mr Aslam used avoidance, startled easily, and was hypervigilant. Dr Akkerman made a diagnosis of post-traumatic stress disorder and major depression arising from the assault on 21 August 2006. He considered that Mr Aslam could not currently work and was totally unfit and was unlikely to return to work in the future. Dr Akkerman assessed 27% WPI.

270. In a report dated 31 May 2017, Associate Professor Robert Kaplan, consultant psychiatrist, noted that Mr Aslam reported a history of an assault which occurred when he was driving a taxi with three passengers. Mr Aslam told Professor Kaplan that the front passenger held his neck while he was hit by the passenger in the back and they took his money and ran from the cab. Mr Aslam said that he was bleeding down his face but tried to chase them. He noted that the police had subsequently caught the assailants. Associate Professor Kaplan noted that Mr Aslam was taken by ambulance to Sydney Hospital and spent several hours in ED. Associate Professor Kaplan noted that Mr Aslam said he took five to six months to return to work. Mr Aslam stated that at work he would get angry with customers which led to complaints and he lost his licence and had not worked since. Mr Aslam thought that he worked as a taxi driver for two to three years after the assault and that after he left work his domestic situation deteriorated. Mr Aslam said that he visited Pakistan every two years to see his sister who was unwell, and when in Pakistan attended Dr Anwar.
271. Under “current situation”, Associate Professor Kaplan noted that Mr Aslam’s major difficulty was anger, which put strain on his family and led to problems in public. He reported flashes when his eyes were closed and described thought content as “very bad things” and often recalled the assault. He noted that the relationship with his first wife and children broke down because he was “too dangerous”. He stated he got angry with his wife because she was a liar and did not believe him and admitted to having hit her. The police had been called several times and an AVO against him had lapsed. Associate Professor Kaplan reported that much of the anger arose from perceptions of what people, especially in public or neighbours, said about him. Mr Aslam stated he had attacked people in public on three to four occasions when he thought they were talking about him, and the police had become involved but he was not charged. Mr Aslam reported other symptoms were being “pushed into a black hole by someone” and derogatory voices. He referred to visual images such as shadows and shapes. Associate Professor Kaplan considered that Mr Aslam was describing ideas of reference, if not, paranoid delusions. Associate Professor Kaplan noted that Mr Aslam was seeing Dr Virik every two to four weeks for treatment of back and knee pain as well as counselling, and saw his GP, Dr Prasad, for monitoring of his physical condition. He also noted he saw Dr Ali, psychiatrist every one to two months and had been referred to a psychologist two months ago. He noted current medication was Endep 25 mgs and Zoloft 100 mgs.
272. Associate Professor Kaplan noted that until the subject assault, Mr Aslam coped well. He had immigrated to Australia, had a good marriage, and was working as a taxi driver after he injured his right knee. He noted that he returned to taxi driving after the assault but had a personality change leading to anger, difficulty with customers, and tensions in his marriage. Professor Kaplan reported that after a period, possibly six months, he was forced to give up taxi driving, his marriage broke down and court orders were taken out because of his violence. He noted Mr Aslam had remarried and had three more children, and his wife was struggling to care for him but was also “the subject of his violence for which police had been called and other social interventions required”. Associate Professor Kaplan noted Mr Aslam described himself as angry and dangerous and struggled to contain these feelings and had assaulted three people because of the perception they were saying things or a potential threat to him. He noted that Mr Aslam admitted guardedly to ideas of reference, if not paranoid delusions, when dealing with people, but not to thought interference or problems watching television. He reported that Mr Aslam had memory problems, was distracted, his affect was labile, anxious and close to being distraught.
273. Under “diagnosis”, Associate Professor Kaplan noted Mr Aslam blamed his problems on the assault and continued to ruminate on the event. This account had been accepted by a psychiatrist he had seen that features such as nightmares and flashbacks were subsumed by what could only be regarded as psychotic symptoms in this interview. Associate Kaplan stated that it was interesting that the psychiatrist in Pakistan, who would know his background and language, found that he had manic depressive psychosis. Associate Professor Kaplan concluded that the presentation was of a psychotic disorder but it was not possible to show this arose from schizophrenia or bipolar disorder. The diagnosis was best labelled as psychotic disorder NOS [sic].

274. Under “causation” Associate Professor Kaplan noted that while Mr Aslam experienced distress after the assault, he was able to return to work as a taxi driver. He considered on the information given at the interview that his condition had been dominated by a psychotic disorder that led to the end of his first marriage, estrangement from his children, several incidents of assaulting people in public, as well as assaulting his wife and cutting off friends. Associate Professor Kaplan concluded that the psychotic disorder would not arise from an incident such as the assault. Associate Professor Kaplan noted there was a remote possibility that it could be caused by organic brain injury but there was nothing to indicate that he had this from the assault. He concluded it was not possible to show that Mr Aslam’s condition arose from the assault and the assault was not the substantial contributing factor to the condition. Associate Professor Kaplan concluded that Mr Aslam was incapable of working in any capacity and was possibly a danger to the public, if not himself, and he would not be able to work until there was a significant recovery. Associate Professor Kaplan concluded that Mr Aslam’s condition caused concern and hoped that he would receive appropriate treatment and recognition of his condition and strongly recommended he seek a second opinion to determine further management.

DEEMED EMPLOYER - SCHEDULE 1 CLAUSE 10 OF THE 1998 ACT

275. The first issue to be decided is the identity of Mr Aslam’s deemed employer.

276. The matter was argued on the basis that Mr Aslam’s entitlements, if any, were created by Sch 1, cl 10, of the 1998 Act.

277. Schedule 1, cl 10 of the 1998 Act reads:

“A person engaged in plying for hire with any vehicle or vessel, the use of which is obtained by that person under a contract of bailment (other than a hire purchase agreement), in consideration of the payment of a fixed sum, or a share in the earnings or otherwise, is, for the purposes of this Act, taken to be a worker employed by the person from whom the use of the vehicle or vessel is so obtained.”

278. It appears evident that at the time of the assault on 21 October 2006 Mr Aslam was engaged in driving a vehicle obtained under a contract of bailment within the meaning of Sch 1, cl 10 of the 1998 Act.

279. The question to be decided is whether Mr Aslam made a contract of bailment within cl 10 with Mr Tanwar, or with Tanwar Enterprises or with Mr Ghazi.

280. There was no dispute at the time of the incident on 21 October 2006 that Mr Aslam was in the course of his “deemed employment”.

281. The question to be decided is whether Mr Aslam obtained the use of T-1078 under a contract of bailment within cl 10 and whether the use of the vehicle was so obtained from Mr Tanwar, or from Tanwar Enterprises or from Mr Ghazi.

282. There are many significant conflicts between the evidence given by Mr Aslam, Mr Tanwar and Mr Ghazi. The only other witness to the arrangements between Mr Aslam and the bailor of T-1078 at about the time of the incident on 21 October 2006 appears to be Mr Qasir Tasim.

283. In a statement dated 10 April 2008, Mr Aslam said that he had been employed as a taxi driver with Combined Taxis for about two and a half years. He stated that he had worked for more than one employer, with the main employer being Mr Tanwar, who was an owner with the Combined Taxis group.

284. Mr Aslam stated that he had worked for Mr Tanwar from the start. He stated that his arrangements with Mr Tanwar were that he could work five days in the evening from 3.00 pm to 3.00 am. He said that at the commencement of each shift he would pick up the taxi from Mr Tanwar's home at 4 Charlotte Grove, Bella Vista, or from the base at the BP gas pump in Silverwater Road in Silverwater.
285. Mr Aslam stated that when he first started working for Mr Tanwar the arrangement was that he would rent the taxi from him at a cost of \$135 per shift. He said that the money had to be paid at the completion of the shift and any money he earned on top of the \$135 was his money. He stated that Mr Tanwar supplied him with a uniform which he had to keep and look after.
286. Mr Aslam said that he believed he was working for Mr Tanwar and he was paying him the shift charges. Mr Aslam stated that when he started work in November 2005, he worked for Mr Tanwar for 1 month and 20 days. He then worked for another owner but also continued to do work for Mr Tanwar. He said that he then worked for Mr Kapish at Premier Cabs for less than one month. Mr Aslam stated that he later went back and worked for Mr Tanwar under the same arrangement, in about June or July 2006. He said that Mr Tanwar supplied him again with a new uniform but changed the money arrangements so that he paid different amounts for different days. Mr Aslam stated he paid \$110 for Monday, \$120 for Tuesday, \$140 for Wednesday, \$160 for Thursday and \$180 for Friday. Mr Aslam said that insurance was not discussed and it was his responsibility to pay his tax. He stated he did not sign any paperwork and it was a verbal agreement. Mr Aslam stated that on 21 October 2006 he commenced his shift as normal, driving taxi T-1078 which was owned by the first respondent.
287. In a statement dated 27 March 2012, Mr Aslam stated that he had six months off work following the arthroscopy in April 2006. Mr Aslam said that after his time off work recovering from the arthroscopy, he recommenced work in October 2006 with Mr Tanwar. He said Mr Tanwar was the owner of several taxis and the director of Tanwar Enterprises. He said that he had previously worked for Mr Tanwar from December 2005 to January 2006 and that when he recommenced work in October 2006 the arrangement between them continued as before. Mr Aslam said that he usually commenced his shift by collecting the taxi from Mr Tanwar's home or from the base at the BP Gas Pump in Silverwater Road in Silverwater. Mr Aslam said that when he collected the vehicle at the commencement of each shift, he usually spoke with Mr Tanwar. He said that he paid Mr Tanwar a set amount for each day of the week he worked and kept as remuneration the balance of the daily takings. He said he wore a Taxis Combined uniform which was given to him by Mr Tanwar.
288. In a statement dated 11 September 2012, Mr Aslam denied having any arrangement or agreement with any other individual or party relating to the driving of a taxi on or about 21 October 2006 other than with Mr Tanwar. Mr Aslam said that he had never heard of "a Mr Millard (described as a 'bailee') or anyone called Hazzi (described as a 'manager')" [sic]. He said that with respect to each shift in October 2006 and at all other times there would be a log or record completed containing details as to mileage and other matters and Mr Tanwar and he would sign off on the daily record and Mr Tanwar would keep the original and he would be given a copy.
289. In a statement dated 13 November 2018, Mr Aslam stated that he had read the statement of Mr Tanwar dated 26 June 2018 and denied the contents of that statement. Mr Aslam said that during the period he drove taxi registration number T-1078, he was fully aware the taxi he was driving was owned by Mr Tanwar. He stated that he had no dealings whatsoever with a person named Abdul Hameed Ghazi and did not know who this person was. Mr Aslam said that all his dealings were with Mr Tanwar. Mr Aslam stated that every week he saw Mr Tanwar and handed to him the money he owed him for using his taxis. Mr Aslam said that he usually saw him at the BP service station at Silverwater but on some occasions, he attended Mr Tanwar's home at 4 Charlotte Grove, Bella Vista. He said that when he paid

Mr Tanwar his moneys each week, he often did so in the presence of Mr Taseer Qasim, who also dealt with Mr Tanwar. Mr Aslam said that from his conversation with Mr Qasim at the time, it was clear to him that Mr Qasim was aware that Mr Tanwar was the owner of the taxi he drove and that Mr Qasim always paid moneys direct to Mr Tanwar.

290. In a statement dated 24 April 2018, Mr Taseer Qasim stated that in about 2005 and 2006 he worked as a taxi driver during the day. He said that he drove taxi registration number T-1078 which was owned by Mr Tanwar. Mr Qasim recalled that for a period in or about 2005/2006 Mr Aslam worked as a taxi driver and also drove taxi registration number T-1078 which was owned by Mr Tanwar. He said that Mr Aslam drove the taxi during the night and he drove the taxi during the day.
291. In a second statement dated 24 April 2018, Mr Qasim said that in about 2005 and 2006 he worked as a taxi driver driving taxi registration number T-1078 which was owned by Mr Tanwar. He stated that during the period, all his dealings regarding the taxi were with Mr Tanwar, who he knew to be the owner of the taxi he drove. Mr Qasim stated that changeovers for the taxi drivers usually occurred at the BP service station at Silverwater. He said that when he attended the service station, he often saw Mr Tanwar and once a week he would hand to Mr Tanwar the money he owed him for using his taxi.
292. Mr Qasim said that he was aware that another person named Hameed Ghazi attended the BP service station at Silverwater from time to time. He stated that Mr Ghazi was known to him and he sometimes saw Hameed at the service station. Mr Qasim confirmed that Mr Ghazi did not have anything to do with him or the taxi he drove and that all his dealings and financial transactions were with Mr Tanwar.
293. Mr Qasim said that during the period when Mr Aslam also drove taxi registration number T-1078, he saw Mr Aslam on many occasions speaking with Mr Tanwar. Mr Qasim said that he was aware that Mr Aslam paid money to Mr Tanwar each week. He said that often he and Mr Aslam attended the BP service station together and they paid Mr Tanwar at the same time. Mr Qasim said that he did not recall ever seeing Mr Aslam speaking with Hameed Ghazi. Mr Qasim wrote: "Like me, Farooq had no reason to speak to Hameed as the taxi Farooq drove was owned by Ramesh Tanwar and all our dealings were with Ramesh."
294. Mr Tanwar, in his statement dated 18 June 2018, said that he was the sole director of the second respondent, Tanwar Enterprises Pty Ltd. He said that before 2005 he owned and operated three taxis and then in November 2005, he purchased a number of taxis and leased one of those taxis, taxi T-1078, to Mr Ghazi on a fixed weekly lease.
295. Mr Tanwar stated that after he leased the taxi to Mr Ghazi, Mr Ghazi hired taxi drivers for taxi T-1078 for any or all shifts, negotiated the Pay-ins) and collected the Pay-ins from the drivers. Mr Tanwar said that he was aware that on 21 October 2006, taxi T-1078 was hired by Mr Aslam and any arrangement Mr Aslam had for the shift was with Mr Ghazi and not with him. He stated that when Mr Aslam drove T-1078 in 2006, he never at any stage bailed any taxi to him, never collected any Pay-ins from Mr Aslam nor had any discussion with Mr Aslam regarding shifts and Pay-ins. Mr Tanwar stated that he did not meet Mr Aslam when he came to drive for Mr Ghazi in 2006. Mr Tanwar stated that when Mr Aslam returned to drive taxis in November 2006, all the bailment arrangements were made by him with Mr Ghazi as before and not with him.
296. In a statement dated 26 June 2018, Mr Tanwar stated that he purchased the taxis from the fourth respondent at the end of 2005, but Mr Ghazi was to continue to operate/bail them. Mr Tanwar stated that during this period any old drivers and especially any new taxi drivers who started working from the BP service station at Silverwater would only deal with Mr Ghazi and no-one else and they would make all bailment arrangements with Mr Ghazi. He said that the only link Mr Aslam had with him was that the taxi Mr Aslam drove was owned by him. Mr Tanwar said that all changeovers Mr Aslam had for any taxi he drove at that time were with Mr Ghazi at the BP service station at Silverwater.

297. In a statement dated 8 May 2020, Mr Tanwar stated that in the year 2005 he was the owner of three taxi registration plates, the lessee of three taxis registration plates, the owner of six cabs, the registered owner and "accredited operator" of all six taxis. He stated that the registration numbers were T-1478 (owner), T-2879 (lessee), T-3331 (owner), T-4911 (lessee), T-5103 (lessee) and T-7640 (owner). Mr Tanwar said that in November 2005 he purchased five cabs from Mr Gazi and took over all the taxi leases, which Mr Ghazi had with TCS (Taxi Combined Services) network, now known as 13cabs. He said that he signed new lease agreements and new management papers with the TCS network and became the registered owner/accredited operator/lessee of taxis registration numbers T-186 (lessee), T-1078 (lessee), T-1526 (lessee), T-4495 (lessee) and T-7899 (lessee).
298. Mr Tanwar stated that after he became the registered owner/accredited operator/lessee of these taxis, he sub-leased them back to the Mr Ghazi on a fixed weekly lease for the sum of \$1,300 per week approximately and that leasing arrangement for those taxis was still in place at the end of 2006. He said that Mr Ghazi was paying him by EFTPOS (which was used by his drivers in a taxi), Cab-Charge dockets and cash. Each day when the taxi drivers used any EFTPOS machine installed in the taxi, which was linked to Mr Tanwar's account with the TCS network, money was deposited to his account. He said that this was because he was the registered owner/accredited operator of these taxis. Mr Tanwar stated that after about a week, Mr Ghazi was providing him with EFTPOS receipts, Cab-Charge dockets for each taxi and if the total of the EFTPOS receipts and Cab-Charge dockets was less than \$1,300 then Mr Ghazi paid the balance/shortfall in cash. However, if the total of the EFTPOS receipts and Cab-Charge dockets were more than \$1,300, then Mr Tanwar paid cash to Mr Ghazi.
299. Mr Tanwar stated that Mr Ghazi made arrangements for the taxis according to his own choice and was responsible for arranging or finding taxi drivers for the taxi, negotiating and making Pay-ins arrangements/agreement with the taxi drivers as he liked, organising any taxi drivers shift and changeovers for these taxis, communicating with taxi drivers regarding which taxis they are driving, shift timings, changeover locations and time, arrangements for pick up and dropping off taxi keys, checking the roadworthiness of the taxi and arrange repairs/maintenance accordingly, providing taxi stationery ie taxi driver daily worksheet, EFTPOS paper rolls and visiting card etc, making up a taxi driver roster to know which taxi driver is driving which taxi on any given day with their start and finish time stated and making arrangements to collect Pay-ins and taxi driver daily worksheets from drivers.
300. Mr Tanwar said that as the registered owner/accredited operator/lessee for these taxis which he purchased from Mr Ghazi and subleased back to him, he was responsible for paying for any or all registration costs, any or all quarterly inspection fees, paying the taxi lease to TCS Network for the taxi registration plate owner, paying network radio fees to TCS Network, paying for any or all repairs and maintenance and paying for any or all comprehensive/third party insurances.
301. Mr Tanwar stated that at no stage did he have any dealings directly with Mr Ghazi's drivers and as far as he was aware drivers did not know he was the owner of the taxis they were driving. He stated that between November 2005 to January 2007, there were a few occasions where a taxi was replaced with another taxi which Mr Ghazi subleased from him. He stated that taxi T-1078 was one taxi that Mr Ghazi had complete control of and he continuously made all arrangements for taxi drivers during this period until he stopped working.
302. Mr Tanwar stated that he confirmed that he did not bail any taxi to Mr Aslam at the time when he had started to drive the taxi from the BP service station at Silverwater in October 2006, and especially on 20 October 2006. He said that Mr Aslam also never contacted him after the incident on 21 October 2006 and he had no dealing/communication personally or over the phone with him.

303. Mr Tanwar stated that while searching for records he found one of his handwritten books containing entries for October 2006, which was part of his official bookkeeping. He stated that the record confirmed which taxi was driven by which taxi driver on a particular day and their Pay-ins for the day. He noted that the taxis were T-2879, T-1478, T-3331, T-5403, T-7548, T-4495, T-4966 and T-7640. He stated that although at the same time he was registered owner of other taxis including T-1078, he did not keep any records for these taxis because Mr Ghazi was doing that as bailor/operator/sublessee and was completely responsible for the bailment of these taxis. These records appear to show that Mr Tanwar was involved in the operation of eight taxis in October 2006 and received the Pay-ins for those vehicles. These entries were inconsistent, in my view, with the oral evidence given by Mr Tanwar on 2 December 2020 when he said that he had not continued to operate the seven or eight taxis but had given almost all of them except for one or two to Mr Ghazi to operate.
304. Mr Tanwar stated that he did not agree that the Mr Ghazi was his employee because he never paid him any wages or salary, never withheld any tax from the fourth respondent, never issued him with any group certificate, never paid any superannuation into a nominated account, never supplied him with a uniform or gave him tools, never provided him with a vehicle or travel allowance, never provided him with a rostered time to start or finish, never paid him holiday pay or sick leave, never provided him with any accommodation and never paid him any weekend loading or overtime. He agreed that Mr Ghazi's duties included arranging drivers for taxis, rostering and arranging any repairs or maintenance for taxis, in accordance with their agreement set out above.
305. Mr Tanwar disagreed that Mr Ghazi was an employee of his or of Tanwar Enterprises. He stated that Mr Ghazi had said that his duties included arranging drivers for taxis, rostering and this was the main and important job of any bailor in the taxi industry in NSW. He stated that the bailor, who did this work, would know how many shifts any driver had driven in a week, how much money to charge for each shift, and collect the Pay-in accordingly. He said it would not be practical for him to know how much money was to be collected from each or any driver.
306. Mr Tanwar disagreed that he paid Mr Ghazi a salary, or that Mr Ghazi was his employee. He disagreed that Mr Ghazi began working from Petersham in February 2006 and was managing 13 taxis on his behalf. He stated that he in fact purchased the service station at Lewisham in May 2006 and Mr Ghazi did not manage 13 taxis for him. He stated that even after he had the service station at Lewisham, Mr Ghazi was mainly operating the taxis from the BP service station at Silverwater and not only for him but for other taxi owners.
307. Mr Tanwar stated that it was illegal for Mr Ghazi to arrange drivers for taxis and make a roster without having met them and not collect or take their details. He stated it would be almost impossible for Mr Ghazi not to have met Mr Aslam who was the taxi driver of taxi T-1078.
308. Mr Tanwar stated the Mr Ghazi was never employed by Tanwar Enterprises.
309. In a signed statement dated 20 April 2020, Mr Ghazi stated that he had not bailed, leased or rented taxi T-1078 to Mr Aslam at any time. He stated that he had owned and managed taxi businesses on and off for 15 years from some time in 1989 until 2005, when he sold the five vehicles to Mr Tanwar. He stated that as far as he was aware, Mr Tanwar took over the leases for the five taxi plates, including the taxi plate lease for taxi T-1078 through TCS.
310. Mr Ghazi stated that he had never met Mr Aslam. He said that before Mr Tanwar purchased the five vehicles from him, Mr Tanwar asked him to work for him and help him out with managing the taxis. Mr Ghazi said that Mr Tanwar had said 'I will pay you and you manage the taxi business for me.' Mr Ghazi agreed and understood the arrangement to be that of an employer and employee with the job title of 'Manager'.

311. Mr Ghazi stated that as an employee of Mr Tanwar or Tanwar Enterprises, his duties included arranging drivers for the taxis, rostering and arranging any repairs or maintenance of the taxi vehicles at the BP Silverwater workshop. He said that sometimes drivers would leave envelopes of cash with him and he would pass these onto Mr Tanwar when he saw him. He said that all payments or documents (ie worksheets) he received from the drivers were handed directly to Mr Tanwar. Mr Ghazi stated that he received a salary from Mr Tanwar in the sum of \$650 cash per week. He believed that he was an employee of Mr Tanwar because he was being paid a salary and he no longer had any interest in the taxi business that he sold to Mr Tanwar.
312. Mr Ghazi said that sometime in February 2006, Mr Tanwar moved his taxi business to Speedway petrol station on Canterbury Road, Petersham. He said that from some time in February 2006 he began working from Petersham and managing 13 taxis on behalf of Mr Tanwar or Tanwar Enterprises. He said that he did not know or meet all the taxi drivers, as not all drivers did their shift changeovers at Silverwater or Petersham. He said that some drivers did their shift changeovers at their homes or at the homes of other drivers or at the home of Mr Tanwar in Bella Vista.
313. Mr Ghazi stated that after he sold the vehicles to Mr Tanwar in November 2005, he did not lease the taxis back from Mr Tanwar and was not a taxi bailor or taxi operator for taxi T-1078 or any other taxi owned or operated by Mr Tanwar or Tanwar Enterprises. He stated that he did not receive any income from any of the drivers of the taxis operated by Mr Tanwar or Tanwar Enterprises.
314. In respect of an unsigned draft statement of Abdul Hameed Ghazi dated 18 June 2018, Mr Ghazi said that on 18 June 2018 Mr Tanwar, his wife and their teenage son attended his home in Blacktown. He said that Mr Tanwar asked him to sign a statement because he was the bailee. Mr Ghazi said that he was not a bailee and was working for Mr Tanwar who paid him \$650 per week. Mr Ghazi asked why he was being involved and Mr Tanwar said that he had too many properties in his name and Mr Ghazi did not have anything so if he took the responsibility, they could not claim anything against him. Mr Ghazi said that he replied that he could not sign the draft statement and it was none of his business. He stated that he did not type, dictate, approve or sign the draft statement dated 18 June 2018 and it was not his statement.
315. Mr Ghazi stated that he had never seen or met Mr Aslam and that Mr Aslam was not a driver of taxi T-1078 when he operated his taxi business up to November 2005. He said that he first heard about Mr Aslam from the day shift driver of taxi T-1078 after he started working for Mr Tanwar or Tanwar Enterprises. He recalled the day shift driver's name to be a Mr Milad Saghapi, and that he believed this person may have arranged for Mr Aslam to be the night shift driver for taxi T-1078.
316. Mr Ghazi stated that he did not arrange for Mr Aslam to be a driver of taxi T-1078 while working for Mr Tanwar or Tanwar Enterprises. He stated that he was never contacted by Mr Aslam in relation to the incident or injury on 21 October 2006 and that the first time he heard about this matter was when Mr Tanwar called him and came to visit him at his home in June 2018 to ask him to sign a statement. He stated that he did not have any records from the taxi business he sold in 2005 or any records confirming his employment with Mr Tanwar or Tanwar Enterprises in 2005 or 2006.
317. In the draft unsigned statement dated 18 June 2008, Mr Ghazi stated that he had owned and operated taxis for a period of more than 20 years when he sold all his taxis to different owners/operators, including Mr Tanwar. It stated that after selling taxis to Mr Tanwar, who had tried to operate them, Mr Tanwar leased some of his taxis to him on a weekly basis, including taxi T-1078.

318. In this draft unsigned statement, Mr Ghazi is recorded as stating that as the operator of taxi T-1078 it was his responsibility to bail/hire the taxi to the different drivers and make the necessary arrangements with them for the shifts they wished to drive, to find drivers, discuss payments (Pay-ins), charges/rate, arrange the drivers for morning shift and afternoon shift, discuss with the drivers about general conditions of their bailment and arrange any repairs and maintenance as required for the taxi. The draft statement says that one of these drivers was Mr Aslam who he had met at the end of 2005 at the BP service station at Silverwater. It also says that during a conversation Mr Aslam informed him that he wanted to work night shift Monday to Friday and they discussed and agreed on a fixed payment for the five days. It adds that Mr Ghazi did not supply him with a uniform as he advised that he already had one.
319. The draft statement adds that after working at the end of November and December 2005, Mr Aslam stopped hiring the taxi from him in early 2006, but in June or July 2006 Mr Aslam came back and wanted to hire the taxi on bailment. This draft statement said that he changed his previous bailment arrangement regarding the Pay-ins so they were different for each day and Mr Aslam continued to drive shifts 3.00 pm-3.00 am Monday to Friday.
320. None of the other witnesses, apart from Mr Tanwar's wife, Shirley Anne Tanwar and their son, Abhay Tanwar, referred to Mr Aslam and any arrangements that Mr Aslam had with either Mr Tanwar or Tanwar Enterprises or Mr Ghazi at around time of the incident on 21 October 2006. Even the unsigned statement of Mr Milad Saghapi, who according to Mr Ghazi was the day shift driver of taxi T-1078, did not refer to Mr Aslam and he made no reference to driving taxi T-1078. Mr Ghazi's evidence that Mr Milad was the day driver of taxi T-1078 is inconsistent with the evidence of Mr Qasim, who stated that he was the day driver of taxi T-1078 and Mr Aslam was the night driver.
321. Mr Aslam's evidence is that he bailed the taxi from Mr Tanwar and this evidence was corroborated by Mr Qasim. Mr Aslam said that that he did not know Mr Ghazi. In cross-examination on 15 October 2020, Mr Aslam maintained that he did not know and had never met Mr Ghazi.
322. Mr Tanwar's evidence is that he had sub-leased T-1078 and other vehicles to Mr Ghazi and that Mr Ghazi bailed the taxi T-1078 to Mr Aslam.
323. Mr Ghazi's evidence was that he did not know Mr Aslam, and although he assisted Mr Tanwar in managing some of the taxis Mr Tanwar operated, he did not bail taxi T-1078 to Mr Aslam on the afternoon of 20 October 2006.
324. Three daily driver worksheets were produced by Mr Aslam in response to a Notice to Produce issued in earlier proceedings in 2008. It was strange that only three worksheets were produced in response to the Notice to Produce that requested documents relating to the earning of income or receipt of money for the period 1 January 2006 to date. It was also odd that these documents were not relied on by Mr Aslam in earlier proceedings. However, what caused greater concern is the fact that the odometer readings on the daily worksheets for taxi T-1078 appeared to be wrong when compared to the documents filed by Mr Tanwar and Tanwar Enterprises.
325. The taxi driver daily worksheet for T-1078 for the period 17 October 2006 to 18 October 2006 showed the odometer start at 490,250 and finish at 490,515. The odometer reading for taxi T-1078 in the taxi driver daily worksheet for the period 18 October 2006 to 19 October 2006 was 490,617 at the start and at the finish 490,811. In the last of the taxi driver daily worksheet for the period 20 October 2006 to 21 October 2006 the odometer reading at the start was 490,987 and there was no figure for the odometer finish.
326. Two Taxi-Inspection Reports were filed by the first respondent in the AALD. The first report dated 17 July 2006 for taxi T-1078 showed an odometer reading of 221,306 km. The second report dated 6 March 2007 for T-1078 showed an odometer reading of 310,391 km. In a statement that was undated and unsigned, Mr Charlie Kazzi stated that he was the owner and operator of Burwood Petroleum mechanical workshop which was an authorised taxi

inspection station. He stated that he had been shown two taxi inspection reports dated 17 July 2006 and 6 March 2007 for taxi T-1078. He confirmed that he had written the details in the taxi inspection reports at the time of inspection and stated that as at 17 July 2006 the odometer reading was 221,306 and at 6 March 2007 the odometer reading was 310391. The make, model and e.VIN numbers were the same in both reports, that is, Ford, Model AU11 and e.VIN number 6FPAAAJGSW1858963.

327. Mr Campbell argued that the telephone number of Tanwar Enterprises on the daily driver worksheets was not correct and referred to the telephone records of Mr Tanwar for the period. He also argued that having a date stamp was impractical.
328. Mr Curran argued that it was implausible that the daily driver worksheets, which were first produced in 2018, had been fabricated by Mr Aslam. He argued that if Mr Aslam had done this then in making up the worksheets in the name of Tanwar Enterprises rather than Mr Tanwar complicated the matter and caused further delay. He submitted that it was never put to Mr Aslam that he had the skills, knowledge and ability to make up such a document himself and the suggestion it was fabricated was implausible. In terms of the odometer reading on the worksheet and the odometer readings in the Taxi-Inspection reports, Mr Curran submitted that the vehicles were heavily used and could go off the road for maintenance and the plates would then be put on another vehicle.
329. Although Mr Kazzi's statement was unsigned, I am satisfied that the two Taxi Inspection Reports were business records and the readings on the odometer were accurate. Therefore, a question arises as to whether the three daily driver worksheets produced by Mr Aslam were genuine. On balance, I formed the view that the taxi driver daily worksheets for 17-18 October 2006, 18-19 October 2006 and 20-21 October 2006 may not be genuine and I have treated these documents as unreliable and lacking probative value.
330. The question arises as to how this would impact upon Mr Aslam's credit. I was satisfied that other aspects of Mr Aslam's evidence were truthful. There is no doubt that he was assaulted and injured by the two passengers in taxi T-1078 on 21 October 2006. The reliance by Mr Tanwar on these unreliable daily driver worksheets justifies more careful scrutiny of the rest of his evidence. However, having done so, I have concluded that his evidence on central question of the contractual arrangements which he made with Mr Tanwar should be accepted as truthful and accurate.
331. The credit of Mr Tanwar also needs to be considered. Mr Ghazi alleged that statement (referred to as the unsigned draft statement of the fourth respondent, Mr Ghazi), prepared by Mr Tanwar and his son Mr Abhay Tanwar, was untrue in parts. Mr Abhay Tanwar and Mrs Tanwar both provided statements concerning the preparation of this statement and the comments allegedly made by Mr Ghazi, including the fact that Mr Ghazi knew who Mr Aslam was. Mr Abhay Tanwar stated that he made notes on the initial conversation between Mr Tanwar and Mr Ghazi and then prepared the draft statement. However, those notes were not produced by Mr Tanwar.
332. I was not satisfied that Mr Abhay Tanwar or Mrs Tanwar were truly independent witnesses. In particular, Mr Abhay Tanwar was involved in the preparation and typing up of multiple statements in early 2020. He was not an independent investigator but Mr Tanwar's son and I would infer that Mr Abhay Tanwar was aware that his father may have to make payments of compensation should his father be found to be the deemed employer of Mr Aslam.
333. Having listened to Mr Ghazi give evidence, it is clear that the language and words used in the draft unsigned statement were conclusory and used legal terms and expressions, such as bailing taxis to drivers. In my view, the words and language in the draft unsigned statement did not reflect the type of language Mr Ghazi would have used in any initial statement. Further, the draft unsigned statement was deficient in factual detail.

334. Mr Ghazi, in his statement dated 20 April 2020, said that when Mr Tanwar, his wife and son visited his home on 18 June 2018, he was told by Mr Tanwar that he needed Mr Ghazi to sign the draft unsigned statement. Mr Ghazi asked why he was being involved in the matter and Mr Tanwar said “because I have too many properties in my name and you don’t have anything in your name so you can take responsibility, and they can’t claim anything against you as you can show bankruptcy.”
335. Mr Ghazi in his statement dated 20 April 2020 said that he was a pensioner, had numerous health conditions and could not afford a lawyer to obtain legal representation. He stated he had asked family members to assist him in preparing these documents. While there was no specific evidence concerning any property that Mr Tanwar owned, he appeared to have a number of assets including the home in Bella Vista, a service station at Petersham and a number of taxis. This is more consistent with the events concerning the draft unsigned statement having occurred as described by Mr Ghazi in his statement dated 20 April 2020.
336. Mr Curran argued that there was a failure by Mr Tanwar or by Tanwar Enterprises to provide any taxi driver daily worksheets. He said that an adverse inference would need to be drawn from the failure to produce such documents. He noted that with two shifts a day there would be something like 700 worksheets produced per taxi each year and yet none of the other worksheets were offered in evidence to show either the format of the worksheets or how Mr Tanwar or Tanwar Enterprises dealt with the worksheets. The only worksheets in evidence were produced by Mr Aslam who had produced the three work sheets from October 2006 and two other worksheets from another employer. A valid criticism which applies to both Mr Aslam and Mr Tanwar remains that more taxi driver daily worksheets should have been capable of being produced in order to properly establish whether any worksheets which had been tendered in this case were genuine, and to demonstrate what commonly was the type of language, information and printing shown on this type of taxi driver daily worksheets before, during and after the relevant period.
337. Another issue that raised concerns about Mr Tanwar’s credibility was the fact that despite raising a bailment defence in earlier proceedings it was apparently not until 2018 that Mr Tanwar alleged that Mr Ghazi was the bailor of taxi T-1078. It was only after the current proceedings were commenced that Mr Tanwar stated that Mr Ghazi had subleased a number of taxis from him including T-1078.
338. Mr Tanwar stated in cross-examination that he did not realise that the sub-lessee would have been the bailor of the taxi T-1078 and believed until 2018 that as the registered owner of taxi T 1078, he was the “responsible party”. Mr Tanwar was represented in the prior proceedings by solicitors and, on balance, I find it difficult to accept that he did not really understand what the position was in relation to the bailment of the taxi. It was also difficult to understand why Mr Tanwar did not provide details of how taxi T-1078 was operated and who bailed the taxi to Mr Aslam when Mr Tanwar was first given notice that a compensation claim was to be made back in 2007. Mr Tanwar simply stated that he did not want to make an accusation that Mr Ghazi or someone else was the bailor of the taxi as it was a very serious matter. In my view, an injury to a worker is also a very serious matter. Mr Tanwar’s response made no real sense as he was the owner of taxi T-1078 and if he had sub-leased the taxi to another person such as Mr Ghazi, he would have clearly known about the arrangement and could have provided details of that arrangement once he was notified about the incident and claim.
339. Mr Tanwar stated that he was relying on the Nominal Insurer to defend the claim made by Mr Aslam. However, in order to defend the claim, Mr Tanwar would ordinarily be expected to be able to provide details of who operated taxi T-1078 at the time of the assault in order to enable the Nominal Insurer to obtain relevant records, including taxi driver daily worksheets, details of the shifts worked and monies paid both before and after the assault. This material was highly relevant to any question of capacity for work and if Mr Tanwar did not bail the taxi to Mr Aslam and hold the relevant records, one would have expected him to obtain this material without delay once the claim was made.

340. Mr Tanwar admits he owned and was the accredited operator of taxi T-1078. When Mr Aslam was injured on 21 October 2006 and then made a claim in 2007, Mr Tanwar must have either been the bailor of that taxi or sub-leased it to another party who then bailed the taxi to Mr Aslam. Mr Tanwar, if he had sub-leased taxi T-1078, would have been able to identify who the sub-lessor was immediately as he would have been paid by that party for the use of the taxi if there had been a sub-lease.
341. I should add that I found Mr Tanwar, particularly on the first day of the hearing, to be prevaricating and evasive in terms of how he responded to questions put to him in cross-examination, and an unimpressive witness.
342. Mr Curran pointed to the history of Mr Tanwar's conduct in the prior proceedings as undermining Mr Tanwar's case. In the earlier proceedings (Matter Number 4008-2012) a direction issued by Arbitrator Wynyard on 10 September 2012 was in these terms:
- “1. I direct the second Respondent, Mr Ramesh Tamwar [sic], to provide written particulars of all persons alleged to be managers and/or bailees of the taxi registered number T 1078 as at 21 October 2006. Such particulars to be provided on or before 11 September 2012.”
343. On 26 October 2012, Arbitrator Wynyard in a telephone conference, noted that Mr Vasta, solicitor, then acting for Mr Tanwar, indicated that he would not be relying upon the defence of bailment and that therefore the documents the subject of order 1 in the Directions of 7 September 2012 [sic] have not been produced.
344. Mr Tanwar, in cross-examination on 2 December 2020, denied that the defence had been abandoned and said that they “simply didn't want to continue on that particular point”. I am satisfied from the terms of the direction made Arbitrator Wynyard that Mr Tanwar gave instructions not to rely on the defence of bailment. This position taken on Mr Tanwar's behalf before Arbitrator Wynyard is of significance as it is inconsistent with the factual versions and submissions relied upon by Mr Tanwar in 2020, which raises the possibility of Mr Tanwar's case reflecting a convenient reconstruction of an unreliable and untrustworthy version of events. The abandonment of the defence was also significant because it meant that Mr Tanwar did not have to comply with the direction issued by Arbitrator Wynyard and so did not provide written particulars of all persons alleged to be managers and/or bailees of the taxi registered number T-1078 as at 21 October 2006.
345. The pages from a hand-written exercise book attached to the AALD filed by Mr Tanwar or Tanwar Enterprises recorded details of particular drivers on particular days. For the entry dated 16 October 2006 it appeared that the Pay-ins from different drivers who drove eight taxis were recorded. Mr Tanwar maintained that he operated some taxis at the time of the incident on 21 October 2006, but not taxi T-1078. It was surprising given the long history of the matter that these records were only produced for the first time in these proceedings.
346. Mr Ghazi provided a signed statement dated 20 April 2020 and gave oral evidence on 2 December 2020. It was, unfortunately, difficult because of his accent to understand some of Mr Ghazi's answers to the questions put to him in cross-examination. However, Mr Ghazi maintained that he had just been employed by Mr Tanwar to assist him in operating the taxis Mr Tanwar owned.
347. Mr Ghazi stated that he stopped working in the taxi industry in 2007 because of health reasons. He stated that he has no records from that period, that is over 13 years ago and I accept that it was reasonable for him in the circumstances to have discarded any records that he had in respect of that period before 2007.

348. Mr Campbell argued that because the first claim was made in September 2007 against Tanwar Enterprises, who was by then the registered owner of taxi T-1078 but not the registered owner at the time of the assault, it could be inferred that Mr Aslam did not know Mr Tanwar at the date of the assault. I considered that the question of whom the first claim was made on, was not significant. This type of decision, that is whether to make a claim against a person or a company of whom that person is the sole director and shareholder, is often made by a worker's solicitor and not by the actual worker. I do not accept that any inference can be drawn from the fact that Mr Aslam's first claim was made on Tanwar Enterprises.
349. Mr Campbell argued that the evidence from Mr Aslam and Mr Qasim was inconsistent with the evidence of Mr Ghazi. Mr Ghazi gave evidence that from February 2006 taxi T-1078 was not operating at the service station at Silverwater but at Mr Saghapi's house (the night driver) or at the Petersham premises. I accept that there were inconsistencies between the evidence of the Mr Gazi and the evidence of Mr Aslam and Mr Qasim.
350. Mr Ghazi's evidence was that he did not see or know Mr Aslam because in respect of the taxi which Mr Aslam drove, he always dealt with Mr Saghapi. Mr Ghazi in his oral evidence said that he did not know where Mr Aslam had picked up the taxi. He said that he knew that Mr Saghapi was the day driver and kept the taxi at his place. He referred to an arrangement between Mr Saghapi and Mr Aslam and Mr Saghapi arranging for Mr Aslam to drive the taxi at night. My impression of Mr Ghazi's 's evidence on this issue was that it was speculative and he did not actually know what, if any, arrangements were made by Mr Saghapi.
351. It was significant in my view that Mr Ghazi was giving evidence in 2020 for the first time about events that occurred over 14 years ago. Mr Ghazi is an elderly gentleman, who has various health problems. It is likely, in my view, that he may not recall accurately some details such as where vehicles were operated from or who was the driver of a particular vehicle. However, it is more likely that he would recall the details of any arrangement he had with Mr Tanwar and what he was paid by Mr Tanwar. In any event, I have found Mr Ghazi a truthful and reliable witness whose evidence I prefer to the evidence of Mr Tanwar.
352. Mr Tanwar says he was an accredited operator and registered owner but did not have a contract of bailment with Mr Aslam. Mr Campbell submitted that there was no reliable evidence that there was ever any arrangement that could form a contract of bailment between Mr Aslam and Mr Tanwar.
353. However, in his statement dated 10 April 2008, Mr Aslam said that he had started work for Mr Tanwar in November 2005 and worked for him for 1 month and 20 days. He stated that when he first started working for Mr Tanwar, his arrangement with Mr Tanwar was that he could work five days in the evening from 3.00 pm to 3.00 am and at the commencement each shift he would pick up the taxi from Mr Tanwar's home at 4 Charlotte Grove, Bella Vista, or from the base at the BP gas pump in Silverwater Road in Silverwater. The arrangement was that he would rent the taxi from Mr Tanwar at a cost of \$135 per shift and Mr Tanwar supplied him with a uniform which he had to keep and look after.
354. Mr Aslam stated that he later went back and worked for Mr Tanwar under the same arrangement, in about June or July 2006. He said that Mr Tanwar changed the money arrangements so that Mr Aslam paid different amounts for different days, namely, \$110 for Monday, \$120 for Tuesday, \$140 for Wednesday, \$160 for Thursday and \$180 for Friday. Mr Aslam stated he did not sign any paperwork and it was a verbal agreement.
355. The evidence of Mr Aslam was largely consistent with the evidence from Mr Qasim who said that in about 2005 and 2006 he worked as a taxi driver driving taxi registration number T-1078 which was owned by Mr Tanwar. He stated that during the period, all his dealings regarding the taxi were with Mr Tanwar and that changeovers for the taxi drivers usually occurred at the BP service station at Silverwater. He said that once a week he would hand to Mr Tanwar the money he owed him for using his taxi. Mr Qasim said Mr Ghazi was known to

him but Mr Ghazi did not have anything to do with him or the taxi he drove and that all his dealings and financial transactions were with Mr Tanwar. Mr Qasim said that during the period when Mr Aslam also drove taxi registration number T-1078, he saw Mr Aslam on many occasions speaking with Mr Tanwar and was aware that Mr Aslam paid money to Mr Tanwar each week. He said that often he and Mr Aslam attended the BP service station together and they paid Mr Tanwar at the same time. Mr Qasim said that he did not recall ever seeing Mr Aslam speaking with Hameed Ghazi.

356. On balance, I have come to the conclusion that it was more likely that Mr Tanwar bailed taxi T-1078 to Mr Aslam and that this bailment was operative on 20 October 2006. The evidence of Mr Aslam was corroborated by Mr Qasim. I accept that both Mr Aslam and Mr Qasim dealt directly with Mr Tanwar and paid Mr Tanwar the monies owed for the use of taxi T-1078. I have found that the evidence of Mr Aslam and Mr Ghazi relevant to the bailment issue is probably truthful and accurate, and to be preferred and relied upon wherever their evidence is in conflict with the evidence of Mr Tanwar or other evidence relied upon by Mr Tanwar.
357. I was not persuaded that Tanwar Enterprises bailed the taxi T-1078 to Mr Aslam. Apart from the stamp on the taxi driver daily worksheets for 17-18 October 2006, 18-19 October 2006 and 20-21 October 2006, there is no evidence to suggest that Tanwar Enterprises rather than Mr Tanwar bailed taxi T-1078 to Mr Aslam. As noted above, I considered that the taxi driver daily worksheets for 17-18 October 2006, 18-19 October 2006 and 20-21 October 2006 may not be genuine and I have treated these documents as unreliable and lacking probative value.
358. As an alternative approach to the question of who bailed taxi T-1078 to Mr Aslam, it is necessary to look at the relationship between Mr Tanwar and Mr Ghazi.
359. Mr Tanwar was the registered owner and accredited operator of taxi T-1078 at the time of the assault on 21 October 2006. Mr Tanwar must have known with whom he entered into an agreement of sub-lease with at the relevant time. Mr Tanwar must have known who was subleasing Taxi T-1078 and would have bailed the taxi to Mr Aslam.
360. If Mr Ghazi had subleased a number of taxis from Mr Tanwar on the basis that he had to pay \$1,300 per week for each taxi to Mr Tanwar, then I would have expected to see some documentary evidence of such an arrangement, for example, sub-lease agreement, bank account records or tax returns showing income from subleasing taxi cabs. However, if Mr Ghazi was only paid \$650 per week to assist in managing the taxis and the payment was made in cash, it was less likely that there would be records of such an arrangement. A payment of \$650 per week is indicative, in my view, of an employment or agency relationship with Mr Ghazi merely providing Mr Tanwar with some ancillary assistance by performing some limited aspects of the taxi business conducted by Mr Tanwar. I have concluded, on the balance of probabilities, that Mr Ghazi did not become or act as the bailor of taxi T-1078 to Mr Aslam as bailee, and did not enter into any contract of bailment or sub-bailment of taxi T-1078 with Mr Aslam or anyone else such as Mr Saghapi or Mr Qasim.
361. Mr Campbell did concede (page 131 at [30] of the transcript of 2 December 2020) that a payment of \$650 per week would not be consistent with the type of arrangement as in *Bolton v Ibrahim and Dimitrikakis* [2002] NSWCC 39 (*Bolton*).
362. Mr Campbell referred to the decision in *Bolton*. In that case, Armitage J considered Sch 1 cl10 of the 1998 Act in determining the identity of the applicant's deemed employer. Armitage J said:

"14. It was established in particular by *Doggett v Waterloo Taxi Co Limited* (1910) 2 KB 366 [CA] and *Bates-Smith v General Motor Cab Co Limited* (1911) AC 188 [HL] that a contract of bailment in respect of a taxi cab is to be distinguished from a contract of employment. As a result there was a legislative need perceived in this State in those more innocent times to

ensure that taxi drivers were covered by the Workers Compensation Act in circumstances such as those in the present case, where the true relationship between the driver and the person for whom he or she drove, if I may so put it, was that a contract of bailment, rather than one of employment, existed. Consequently, subsection (11) was inserted in s 6 of the Workers Compensation Act 1926. However, it became clear from *Cooke v Wormald* (1942) WCR 7 that this section in its original form did not meet the situation where the bailor of the vehicle to the driver was the lessor of the vehicle but not the owner thereof. That was because the wording of s 6 (11) as it then stood spoke of 'a person engaged in plying for hire with any vehicle or vessel *the use of which is obtained from the owner thereof.*' [italics added]

15. The subsection was consequently further amended by the Workers Compensation Act and Workmans Compensation (Broken Hill) Act (Amendment) Act 1942 and the reference to 'owner' was deleted, so that the section simply referred to the obtaining of the vehicle or vessel by the person plying for hire under a contract of bailment, without specifying whether that contract was with the owner or with a person who leased or otherwise obtained a vehicle from the owner. The clear legislative effect of that amendment was to provide workers compensation benefits for persons who entered a contract of bailment with a person other than the owner of a vehicle or vessel, such as a taxi cab in this case.
16. The wording of cl 10 quoted above is materially identical to that of s 6 (11) of the 1926 Act. It makes no reference to a contract of bailment with the owner of the vehicle in question. Therefore I think the proper construction of s 10 is that it covers persons such as the applicant who make contracts of bailment in respect of taxi cabs with persons other than the owner of the vehicle who had the use of the vehicle in some fashion or other by lease agreement or otherwise from the owner.
17. That is the situation here, I think, pursuant to the arrangement prevailing at the time of the applicant's accident whereby Mr Ibrahim paid Mr Dimitrikakis \$1,400 per week for the use of the cab, in return for Mr Dimitrikakis paying all outgoings on it with the exception of petrol consumed during the driver's shift which was, as I have said, the responsibility of the driver. Prima facie therefore the applicant is entitled to succeed in this application against the first respondent, Mr Ibrahim, and not the second respondent, Mr Dimitrikakis.
18. As to the submission of Mr Hatzistergos that the contract of bailment was in truth with Mr Dimitrikakis and not Mr Ibrahim, it is to be noted that the applicant's evidence, from which he was in no way shifted in cross-examination, was that the existence of Mr Dimitrikakis or his ownership of the vehicle was at no time disclosed to him before the accident in question. The law in relation to undisclosed principals, even where authority exists in the agent to make the contract in question on behalf of the principal, is that either the agent or the principal when discovered may be sued on the contract: see *Teheran-Europe Co Limited v S T Belton (Tractors) Ltd* (1968) 2 QB 545 at 553; (1968) 2 All ER 886 at 889 and *Maynegrain Pty Limited v Compafina Bank* (1982) 2 NSWLR 141 at 150; see also Cheshire and Fifoot, *Law of Contract* (6th Aust. Edn., 1992) para [1657] at 649. Even assuming that Mr Ibrahim made the contract of bailment with the applicant as agent for Mr Dimitrikakis and with his authority, the fact that Mr Ibrahim did not disclose the existence of Mr Dimitrikakis or his ownership of the vehicle to the applicant means that he, Mr Ibrahim, may be sued on the contract in any event.

19. I do not think that the present circumstances prove such a relationship of principal and agent in any event between Mr Dimitrikakis and Mr Ibrahim in relation to any contract of bailment Mr Ibrahim made with the applicant after he obtained the use of the cab, to put it neutrally, from Mr Dimitrikakis in return for his paying the sum of \$1,400 per week, Mr Dimitrikakis remaining responsible for all outgoings on the vehicle except for the petrol consumed during the driver's shift. I think in fact that the true construction of that arrangement is that Mr Dimitrikakis gave Mr Ibrahim full use of the vehicle for a particular sum and assumed liability for outgoings on the vehicle (except petrol) and left Mr Ibrahim free to make on his own account whatever contract of bailment he liked with any driver he liked for the purpose of obtaining earnings on the vehicle from which he, Mr Ibrahim, would then obtain the necessary remuneration to meet his liability to pay Mr Dimitrikakis \$1,400 per week and make his own profit over and above that sum."

363. Mr Campbell specifically referred to [18] in *Bolton* where Armitage J said:

"Even assuming that Mr Ibrahim made the contract of bailment with the applicant as agent for Mr Dimitrikakis and with his authority, the fact that Mr Ibrahim did not disclose the existence of Mr Dimitrikakis or his ownership of the vehicle to the applicant means that he, Mr Ibrahim, may be sued on the contract in any event."

364. Mr Campbell submitted that if I found agency as opposed to a contract with someone other than Mr Tanwar or Tanwar Enterprises then I would have to consider whether or not Mr Ghazi had dealings with Mr Aslam or Mr Saghapi, and if it was accepted that he made the arrangements for Mr Aslam to drive the vehicle whether he had disclosed that agency.

365. Mr Campbell submitted that If Mr Ghazi or Mr Saghapi was acting on behalf of the Mr Tanwar or Tanwar Enterprises as an agent in a contract of bailment, then according to the decision in *Bolton* they were able to be deemed to be the employer.

366. In light of the factual findings I have made in this case, I consider that the decision of Armitage J in *Bolton* is distinguishable on the facts. This emerges from [5]-[8] of *Bolton*, which I will now briefly summarise. In *Bolton* the taxi driver (Mr Bolton) in a conversation at a taxi base agreed in early 1997 with the taxi operator (Mr Ibrahim) to drive the taxi cab for Mr Ibrahim, for which Mr Ibrahim would pay to Mr Bolton or to somebody else on his behalf a fixed sum, depending on the profitability or otherwise of the shift. No mention was made by or to Mr Bolton either then or prior to the accident involving Mr Bolton in late 1997 of the fact that Mr Dimitrikakis was the registered owner of the taxi cab. As far as Mr Bolton was concerned, he was dealing and contracting in relation to the taxi cab only with Mr Ibrahim and not Mr Dimitrikakis. Mr Bolton was never aware of the terms of the agreement between Mr Ibrahim and Mr Dimitrikakis under which Mr Ibrahim contracted to bail the taxi cab to drivers such as Mr Bolton, Mr Ibrahim would pay Mr Dimitrikakis \$1,400 per week for the use of the taxi cab, and Mr Dimitrikakis would assume liability for almost all outgoings concerning the cab including maintaining workers compensation cover in respect of it.

367. In *Bolton* Armitage J held that the bailment contract for the purposes of Sch 1 Cl 10 of the 1998 Act was only between Mr Ibrahim as bailor and Mr Bolton as bailee, and that even if Mr Dimitrikakis was the undisclosed principal of Mr Ibrahim, this was insufficient in law, having regard to relevant legal doctrines under the law of agency, to make Mr Dimitrikakis the bailor under the bailment contract, and thus the deemed employer of Mr Bolton.

368. By contrast, the contract of bailment in the present case was at all stages between Mr Tanwar as bailor and Mr Aslam as bailee and did not include Mr Ghazi as a party to such contract. No issue in relation to liability of an undisclosed principal arises. Mr Ghazi was merely receiving \$650 per week in relation to assisting Mr Tanwar in relation to assisting Mr Tanwar in some ancillary aspects of Mr Tanwar's business which involved various taxi cabs. As Mr Campbell fairly recognised (as referred to above at paragraph 361) a payment of \$650 per week would not be consistent with type of arrangement as in *Bolton*.
369. Mr Campbell relied on evidence that Mr Ghazi said that Mr Saghapi arranged for Mr Aslam to be the night driver of taxi T-1078 and said that Mr Saghapi bought the money to him for the use of the vehicle which was kept at Mr Saghapi's premises.
370. As noted above, the evidence of Mr Ghazi was inconsistent with the evidence of Mr Qasim. Further, the unsigned and undated statement of Mr Milad Saghapi which was filed by Mr Tanwar or Tanwar Enterprises in the AALD dated 23 October 2020 made no reference to Mr Aslam or even to Mr Saghapi being the day driver of taxi T-1078, despite him stating that he was shown the daily taxi driver worksheets for the driver "Farooq for the year 2006". The daily taxi driver worksheets include various details including the registration number of the taxi, that is, taxi T-1078. Mr Ghazi in his oral evidence said that he did not know where Mr Aslam had picked up the taxi but knew that Mr Saghapi was the day driver and kept the taxi at his place. Mr Ghazi referred to an arrangement between Mr Saghapi and Mr Aslam and to Mr Saghapi arranging for Mr Aslam to drive the taxi at night. As noted above, my impression of Mr Ghazi's evidence was that it was speculative and he did not actually know what, if any, arrangements were made by Mr Saghapi. For that reason, I place no weight on this part of Mr Ghazi's evidence. It is more probable, in my view, that Mr Ghazi did not accurately recall, some 14 years after the events, who drove which taxi and what arrangements were made for picking up the taxi. I do not accept that there was any arrangement made between Mr Saghapi and Mr Aslam to the effect that Mr Saghapi arranged for Mr Aslam to drive taxi T-1078 at nights.
371. Mr Ghazi said that he was not a manager but assisted Mr Tanwar in his business.
372. On balance I am satisfied that Mr Ghazi was paid \$650 per week in cash for assisting Mr Tanwar in his business. There was insufficient evidence to persuade me that Mr Tanwar sub-leased taxi T-1078 to Mr Ghazi. It was more likely than not that Mr Tanwar retained Mr Ghazi merely to assist Mr Tanwar with some limited aspects in the running of his taxi business, but which did not involve any bailment or sub-bailment of taxi T-1078 by Mr Ghazi to Mr Aslam, or Mr Ghazi acting as agent for Mr Tanwar in relation to any bailments or sub-bailment to Mr Aslam. I am not satisfied that Mr Ghazi acted as Mr Tanwar's agent for any legally relevant purpose at any stage in relation to contracting for Mr Aslam's driving of taxi T-1078.

Did the applicant sustain an injury to the lumbar spine?

373. The next issue to determine is whether Mr Aslam sustained an injury to the lumbar spine in the incident on 21 October 2006.
374. Mr Aslam in his statement stated 10 April 2008 said that during the shift he was assaulted by two persons and injured. He stated that after the persons fled from the taxi, he chased them and with the assistance of other people and the police the two persons were arrested. He said that while he was holding the male offender, the man kicked him in the knee and hit his stomach. Mr Aslam stated following this incident he was taken by ambulance to Sydney Hospital where he was admitted. Mr Aslam made no reference to sustaining an injury to the low back or lumbar spine in the statement of 10 April 2008.

375. I accept that in his statement dated 27 March 2012, Mr Aslam stated that as a result of the assault on 21 October 2006 he experienced pain and discomfort in his back. I accept that in his statement dated 11 September 2012 Mr Aslam stated that he suffered blows to the upper body and wrenches to his neck and back.
376. No reference was made to an injury to the low back or lumbar spine in the hospital records of Sydney Hospital where Mr Aslam was admitted following the assault on 21 October 2006.
377. No reference was made to an injury to the low back or lumbar spine in the Ambulance Records dated 21 October 2006.
378. In a report dated 4 June 2007, Dr Haddad, GP, noted that in respect of the assault on 20 October 2006 (sic), Mr Aslam had presented to him on 27 October 2006 needing removal of sutures from the left lower eyelid (3 x 5/0). Dr Haddad noted that Mr Aslam had multiple bruising elsewhere on his body and was complaining of headache and back pain. Dr Haddad noted: "Bruising and swelling was on his head, around his neck and shoulders and his limbs".
379. In a report dated 15 January 2007, that is only three months after the incident on 21 October 2006, Dr Mahony noted that on 20 October 2006 (sic) while working as a taxi driver, Mr Aslam was hit by a male and female passenger in the back seat of his taxi cab and sustained a laceration to the lower mid-forehead, a laceration below the left eye, an injury to his neck with a laceration to the back of the neck, injuries to both shoulders as he was hit on several occasions, and a worsening of the right knee symptoms. He specifically noted Mr Aslam did not sustain any injury to his back at the time.
380. In a report dated 5 September 2007 Professor Ali Raza Hashmi, noted that Mr Aslam complained of severe back ache, neck and shoulder and right knee injuries.
381. In a report dated 8 December 2008, Dr Bentivoglio noted that on 21 October 2006, Mr Aslam was hit from behind by a passenger and sustained an injury to his neck and left side of his face. No reference was made to any injury to the low back or lumbar spine in the incident on 21 October 2006.
382. In a report dated 17 August 2009, Dr Dinnen noted that Mr Aslam stated that the male passenger started hitting him with something on the head, back and shoulder. Dr Dinnen noted that in the hospital Mr Aslam was found to have a problem with his left eye and to have an injury to his knee. Mr Aslam told Dr Dinnen that he continued to have pain in his shoulders, head and neck and ongoing pain and pain and impairment of function in the right knee. Mr Aslam made no reference to low back pain.
383. In a report dated 9 March 2012, Dr Bhavnagri noted that on 21 October 2006 Mr Aslam was assaulted by a male and female passenger in the back seat. Mr Aslam had reported the male passenger hit him and he sustained a laceration to the lower mid-forehead, a laceration below the left eye which required suturing in hospital, a laceration to the back of the neck, injuries to both shoulders, a worsening of his right knee symptoms and abdomen and leg injuries. No reference was made to an injury to the low back or lumbar spine
384. In a report dated 10 October 2016, Dr Patrick described the nature of the injury on 21 October 2006 as being "assault while working as a taxi driver sustaining injuries predominantly to the head, neck, back and right and left shoulders, and with aggravation to earlier right knee injury".
385. Dr Patrick noted Mr Aslam was taken by ambulance to Sydney Hospital where an infraorbital skin laceration was attended to and the applicant made some complaint of neck pain, back pain and pain at both shoulders. No complaint was in fact recorded as being made at Sydney Hospital of back pain.

386. In a report dated 6 December 2016, Dr Akkerman noted that Mr Aslam was injured on 21 October 2006 when working as a taxi driver. Dr Akkerman reported that the applicant had hurt his neck, back, head, face, knee and shoulders.
387. In a report dated 29 December 2016, Dr Carroll noted that Mr Aslam had chronic back pain and long standing multiple injuries to his neck and back due to an assault in 2006.
388. In a report dated 4 August 2017, Dr Rowe noted that Mr Aslam stated that on 21 October 2006 he was assaulted while he was in the driver's seat and was struck on the neck, back and shoulders. Dr Rowe concluded that Mr Aslam may have sustained bruising and strain in the region of the neck and low back as a result of the assault in October 2006, but there was no evidence of any residual pathology in that regard.
389. In considering the question of whether Mr Aslam sustained an injury to his lumbar spine in the assault on 21 October 2006, considerable weight must be given to the contemporaneous accounts and medical reports. A number of doctors, including Dr Patrick, Dr Dinnen, Dr Anwar and Dr Akkerman referred to Mr Aslam having memory problems and this is additional factor which must be taken into account. Therefore, I have placed less weight on the later accounts and later medical histories.
390. It is very significant, in my view, that there was no reference to any back injury in the hospital and ambulance notes as the triage process and the list of injuries compiled for the police were both quite detailed. About three months after the assault, Dr Mahony specifically stated that there was no injury to the lumbar spine. Dr Bentivoglio, in a report dated 8 December 2008, that is about 14 months after the assault, also made no reference to any low back injury.
391. I accept that Dr Haddad saw the applicant 27 October 2006 for the removal of sutures from the left lower eyelid. In a report dated 4 June 2007 Dr Haddad noted that Mr Aslam had multiple bruising elsewhere on his body and was complaining of headache and back pain and observed bruising and swelling on his head, around his neck and shoulders and his limbs. Dr Haddad did not observe bruising in the low back region. He did not describe the particular area of the back where Mr Aslam complained of pain. Dr Haddad described bruising at the shoulder level which would be consistent with an injury to the thoracic spine, not the lumbar spine. I accept that in a later report dated 16 March 2012, Dr Haddad noted that on examination on 27 October 2006 Mr Aslam had evidence of a sutured laceration to his left lower eye lid, plus bruising and abrasions on his back, face, occiput, limbs, neck and shoulders. However, no clinical notes were produced to establish what Dr Haddad actually recorded. In my view, the earlier report of 4 June 2007 was more likely to be accurate.
392. I accept that Professor Hashmi, in a report dated 5 September 2007, noted that Mr Aslam complained of severe back ache, neck and shoulder and right knee injuries. However, Professor Hashmi's report was not only brief but failed to identify the region of the back ache that Mr Aslam complained about and set out no details of the actual assault and mechanism of injury. Further, Professor Hashmi provided no findings on examination. For this reason, I have preferred the opinions of Dr Mahony and Dr Bentivoglio to that of Professor Hashmi. Both Dr Mahony and Dr Bentivoglio took a detailed history of the incident on 21 October 2006 and conducted a proper examination and assessment of the applicant. Dr Mahony provided his reports at the request of the Mr Aslam's solicitors, Carters Law Firm, and clearly was asked to provide a report on the injuries sustained by Mr Aslam in the assault on 21 October 2006. Dr Mahony noted the complaints made by Mr Aslam and carried out an examination of the back. Dr Mahony stated that Mr Aslam did not sustain any injury to his back at the time of the assault. I have placed considerable weight of Dr Mahony's report and the opinions that he expressed because he examined Mr Aslam on 11 January 2007, that is, within three months of the assault and it was an orthopaedic examination carried out at the request of Mr Aslam's solicitors.

393. As noted above, Mr Aslam made no reference to sustaining an injury to the low back or lumbar spine in the statement of 10 April 2008. I accept that Mr Aslam made reference to injuring his back in his later statements in 2012. However, I would attach far more weight to the statement made in 2008, some 18 months after the incident on 21 October 2006.
394. Finally, the mechanism of injury must be considered. It appears that Mr Aslam was sitting in his driver's seat when he was first assaulted. Constable Warren in the Police Report stated that one of the passengers was sitting in the front seat next to Mr Aslam and the other was sitting in the back of the taxi. According to Constable Warren there was a verbal argument with Mr Aslam over the cab fare and the destination. The argument became heated and the passenger in the front seat lashed out by grabbing Mr Aslam by the scruff off his shirt while the argument took place. Constable Warren noted that this action caused Mr Aslam to be pulled towards the passenger in the front seat causing him a minor amount of discomfort. The passenger in the back seat then removed one of her stiletto shoes, took hold of it in one of her hands, reached forward into the front section of the taxi, and in a sideways sweeping motion struck the victim in the face with the heel of her stiletto. The heel section of the stiletto harshly connected with Mr Aslam 's left eye, causing the eye to bleed.
395. I accept the version of events as described by Constable Warren. She interviewed Mr Aslam, an independent witness as well as the two assailants. I am satisfied that Mr Aslam's low back would have been protected to some degree by the back of the seat he was sitting in when the passenger in the rear assaulted him. While he may have been pulled towards the passenger in the front seat and experienced some minor discomfort, I am not persuaded that this pulling motion would have caused an injury to the lumbar spine. Further, there is no medical evidence to specifically support a finding that the action of being pulled towards the passenger in the front seat would have caused injury to the Mr Aslam's lumbar spine.
396. There was evidence that Mr Aslam chased his assailants after they left the taxi. Mr Aslam said that while he was holding the male assailant, the man kicked him in the knee and hit his stomach. Mr Aslam did not say in this statement dated 10 April 2008 that he was kicked in the back. I accept that in cross-examination on 15 October 2020 Mr Aslam said that he tried to catch and hold one person and was hit on his leg and back. However, this was evidence given by Mr Aslam nearly 16 years after the event and I have placed little weight on that account of what happened given in cross-examination. It appears that Mr Aslam provided no history to any doctor of sustaining an injury to the lumbar spine when he chased the assailants and tried to restrain them. I considered it far more likely that the account of what happened in the statement of 18 April 2008 was accurate. I do not accept that Mr Aslam sustained any injury to the lumbar spine when he tried to chase the two assailants and restrain them.
397. In order to be satisfied that an injury has occurred, there must be evidence of a sudden or identifiable pathological change: *Castro v State Transit Authority (NSW)* [2000] NSWCC 12; 19 NSWCCR 496 or as stated by Neilson CCJ in *Lyons v Master Builders Association of NSW Pty Ltd* (2003) 25 NSWCCR 422 (at 429), "the word 'injury' refers to both the event and the pathology arising from it". Therefore, I need to be satisfied that there was an event that caused pathology in Mr Aslam's lumbar spine.
398. After considering the evidence tendered in this case, I am not persuaded that Mr Aslam injured his lumbar spine in the incident on 21 October 2006. The medical evidence as a whole does not support a finding of injury to the lumbar spine on 21 October 2006. I have placed considerable weight on the opinions of Dr Mahony and Dr Bentivoglio as well as the statement Mr Aslam gave on 10 April 2008. There was no explanation provided by Mr Aslam in his later statements as to why he did not refer to an injury to the lumbar spine or low back in his statement. In my view, Mr Aslam has failed to discharge the onus upon him to establish that he sustained an injury to his lumbar spine on 21 October 2006.

Did the applicant sustain an injury to the right lower extremity?

399. The next issue to determine is whether Mr Aslam sustained an injury to the right lower extremity in the incident on 21 October 2006.
400. In his statement stated 10 April 2008 Mr Aslam said that he was assaulted by two persons and injured. He stated that after the persons fled from the taxi, he chased them and, with the assistance of other people and the police, the two persons were arrested. He said that while he was holding the male offender, the man kicked him in the knee and hit his stomach.
401. In a statement dated 27 March 2012, Mr Aslam stated that as a result of the assault on 21 October 2006, he also experienced pain in his right knee which was distinct from the pain to the side of the knee which had been caused by the accident at Bilal Brothers Pty Ltd.
402. In a statement dated 11 September 2012, Mr Aslam said that in the incident on 21 October 2006 he was in the driver seat when the male passenger next to him commenced to grapple with him and strike him. Mr Aslam stated that he was then struck very forcefully in the left eye from behind with a stiletto heel of a shoe worn by the female passenger in the rear seat. He stated that when the first blow was delivered by her with the shoe, he raised his right knee in a sudden reflex action and his right kneecap struck the underside of the steering wheel column very forcefully. He said he experienced severe pain in the right knee and leg. Mr Aslam said that despite these symptoms, he was able to chase after his assailants in a limping run for about 50 m or so before they were apprehended by other people and handed over to the police who were in a patrol car.
403. Constable Warren in the Police Report stated that one of the passengers was sitting in the front seat next to Mr Aslam and the other was sitting in the back of the taxi. According to Constable Warren there was a verbal argument with the applicant over the cab fare and the destination and the passenger in the front seat lashed out by grabbing Mr Aslam by the scruff off his shirt while the argument took place. Constable Warren noted that this action caused Mr Aslam to be pulled towards the passenger in the front seat causing him a minor amount of discomfort. The passenger in the back seat then removed one of her stiletto shoes and struck Mr Aslam in the face with the heel of her stiletto, causing the left eye to bleed. Constable Warren noted that after this action, the two passengers fled the taxi and Mr Aslam pursued them onto George Street, where he and several witnesses flagged down patrolling police.
404. No reference was made to an injury to the right knee in the hospital records of Sydney Hospital where Mr Aslam was admitted following the assault on 21 October 2006.
405. No reference was made to an injury to the right knee in the Ambulance Records dated 21 October 2006.
406. In a report dated 4 June 2007, Dr Haddad noted that in respect of the assault on 20 October 2006 (sic), Mr Aslam had presented to him on 27 October 2006 needing removal of sutures from the left lower eyelid (3 x 5/0). Dr Haddad noted that Mr Aslam had multiple bruising elsewhere on his body and was complaining of headache and back pain. Dr Haddad noted: "Bruising and swelling was on his head, around his neck and shoulders and his limbs". No specific reference was made to the right knee.
407. In a report dated 15 January 2007, that is only three months after the incident on 21 October 2006, Dr Mahony noted that Mr Aslam had sustained an injury to his right knee while working as a warehouse manager in April 2004. Dr Mahony recorded that following that injury in 2004, Mr Aslam was off work for two months and underwent an arthroscopy of the right knee on 28 April 2005. Mr Aslam told Dr Mahony that the arthroscopy did not help to improve his right knee symptoms and further surgery had been recommended. Mr Aslam said that following the surgery on 28 April 2005 he was off work for four to six months. Dr Mahony noted that Mr Aslam then started work as a taxi driver in 2005 and on

20 October 2006 [sic] had a male and female passenger in the back seat of his taxi cab and was hit by the male several times.

408. Dr Mahony reported that Mr Aslam sustained a laceration to the lower mid-forehead, a laceration below the left eye, an injury to his neck with a laceration to the back of the neck, injuries to both shoulders as he was hit on several occasions, and a worsening of the right knee symptoms. Dr Mahoney reported that Mr Aslam had chased the assailants and grabbed the man by the upper portion of his shirt on his left hand. Mr Aslam said that he was then assaulted again, adding injuries to his abdomen and both legs, and his previous symptoms became worse.
409. In a report dated 5 September 2007, Professor Ali Raza Hashmi at Lahore General Hospital, noted that Mr Aslam complained of severe back ache, neck and shoulder and right knee injuries which were the sequelae to the assault on 21 October 2006. There was no reference in this report to the earlier knee injury in 2004 or the surgery to the right knee in 2005.
410. In a report dated 26 May 2008 from the Department of Orthopaedic Surgery at Lahore General Hospital, it was noted that Mr Aslam had been assaulted when working as a taxi driver in Sydney, Australia and was hit by passengers on his neck, back and right knee.
411. In a report dated 8 December 2008 Dr John Bentivoglio, consultant orthopaedic surgeon, noted he examined Mr Aslam on 26 November 2008. He reported that on 21 October 2006 Mr Aslam was hit from behind by a passenger and sustained an injury to his neck and left side of his face. He noted Mr Aslam gave a history of trying to give chase but was re-assaulted by the person and had an injury to his right knee and left groin area. He noted Mr Aslam had said he had injured his right knee in the past in a work accident and had an arthroscopy in the right knee region.
412. In relation to the right knee, Dr Bentivoglio considered there was no evidence of any ongoing disability in the right knee, and any disability present would relate to the previous injury and the arthroscopy in 2005.
413. In a report dated 9 March 2012, Dr Bhavnagri noted that Mr Aslam first presented to Delwood Medical Centre on 20 September 2011. Dr Bhavnagri noted that on 21 October 2006 while working as a taxi driver Mr Aslam was assaulted by a male and female passenger in the back seat. He noted that the male passenger hit Mr Aslam who sustained a laceration to the lower mid-forehead, a laceration below the left eye which required suturing in hospital, a laceration to the back of the neck, injuries to both shoulders, worsening of his right knee symptoms and abdomen and leg injuries.
414. In a report dated 10 October 2016, Dr Patrick described the nature of the injury on 21 October 2006 as being "assault while working as a taxi driver sustaining injuries predominantly to the head, neck, back and right and left shoulders, and with aggravation to earlier right knee injury".
415. Dr Patrick noted Mr Aslam was taken by ambulance to Sydney Hospital and at Sydney Hospital an infraorbital skin laceration was attended to and "he was complaining of aggravation to his right knee". He noted there were small lacerations to the back of the neck and forehead not requiring suturing and there was some complaint of neck pain, back pain and pain at both shoulders. However, Dr Patrick did describe Mr Aslam as a somewhat poor historian.
416. Dr Patrick wrote: "There is no clear evidence that there has been significant ongoing assault related aggravation to the previously operated right knee."
417. In a report dated 29 December 2016, Dr Carroll noted that "Mr Farooq" stated that his knee pain was aggravated in the assault in 2005.

418. In a report dated 4 August 2017, Dr Roger Rowe, consultant orthopaedic surgeon, noted he examined Mr Aslam on 24 July 2017. Dr Rowe reported that Mr Aslam stated that on 21 October 2006 in the course of his employment as a taxi driver, he was assaulted while he was in the driver's seat and was struck on the face, neck, back and shoulders as his assailants tried to rob him. Dr Rowe noted Mr Aslam said he got out of the car and was upset and crying and was then bashed on the right leg by his assailants.
419. Mr Aslam has provided two different accounts of how he injured the right knee in the assault. Firstly, in his statement made on 10 April 2008, he alleged that he chased the assailants and while he was holding the male offender, the man kicked him in the knee. However, in a later statement dated 11 September 2012, Mr Aslam alleged that when he was first struck very forcefully in the left eye from behind with a stiletto heel of a shoe worn by the female passenger in the rear seat, he raised his right knee in a sudden reflex action and his right kneecap struck the underside of the steering wheel column very forcefully. Mr Aslam said that despite these symptoms, he was able to chase after his assailants in a limping run for about 50 m or so before they were apprehended by other people and handed over to the police who were in a patrol car.
420. The account of raising his knee in a reflex action and hitting the underside of the steering wheel was not an account of injury provided in the histories given by Mr Aslam to any of the doctors that he saw, including Dr Patrick and Dr Mahony. There was no medical evidence that would support a finding that such a mechanism of injury, that is hitting the underside of the steering wheel, resulted in an injury to the right knee including a possible aggravation of a pre-existing injury or condition. I am not satisfied after considering the evidence that Mr Aslam injured his right knee by hitting the underside of the steering wheel. This account was provided about six years after the assault in October 2006 and was not corroborated by any other evidence.
421. A question which then remains to be considered is whether Mr Aslam sustained an injury to the right knee when he left the taxi and chased the passengers who had assaulted him. I accept that Mr Aslam left the taxi in order to chase his assailants. Constable Warren noted that Mr Aslam pursued the two passengers onto George Street, where he and several witnesses flagged down patrolling police. However, Constable Warren made no reference to any further attack on Mr Aslam when he pursued the two passengers. I am satisfied that after the assault inside the taxi cab Mr Aslam left the taxi cab in order to chase his assailants.
422. I accept that in his statement dated 10 April 2008 Mr Aslam said that after the persons fled from the taxi, he chased them and, then while he was holding the male offender, the man kicked him in the knee.
423. Dr Mahony in his report of 15 January 2007 noted that Mr Aslam had chased the assailants and grabbed the man by the upper portion of his shirt on his left hand. Mr Aslam said that he was then assaulted again, adding injuries to his abdomen and both legs, and his previous symptoms became worse.
424. In a report dated 8 December 2008, Dr Bentivoglio, noted Mr Aslam gave a history of trying to give chase but was re-assaulted by the person and had an injury to his right knee and left groin area.
425. In a report dated 10 October 2016, Dr Patrick described the nature of the injury on 21 October 2006 as including an aggravation to earlier right knee injury. He reported that when the two passengers ran away, Mr Aslam yelled out and the male came back and hit him again. While Dr Patrick noted that Mr Aslam was taken to Sydney Hospital where "he was complaining of aggravation to his right knee", there was, in fact, no complaint concerning the right knee noted in the hospital records.
426. Dr Rowe, in his report dated 4 August 2017, noted Mr Aslam said he got out of the car and was upset and crying and was then bashed on the right leg by his assailants.

427. I accept that Mr Aslam provided a number of doctors with a history of chasing the assailants and then being assaulted again by the male passenger. This account was provided to Dr Mahoney about three months after the assault on 21 October 2006.
428. There is no doubt that Mr Aslam sustained an earlier injury to his right knee in 2004 whilst employed by Bilal Brothers. Mr Aslam was treated in respect of this injury by his GP, and Dr Walker, orthopaedic specialist and underwent an arthroscopy in 2005. However, it appears that Mr Aslam did not have any specific treatment, including investigations, to the right knee after the assault on 21 October 2006, despite the fact he alleged that the previous injury to the knee was on the other side of the knee.
429. On balance, I am satisfied that Mr Aslam sustained an injury to the right knee in the incident on 21 October 2006 when he chased after the assailants and was kicked by the male assailant. Mr Aslam bears the onus of proof on this issue and I am satisfied, on balance, that it has been discharged.
430. In making this finding, I have taken into account that Mr Aslam's evidence in his statement of 10 April 2008 was consistent with the history given to Dr Mahony about three months after the assault. However, I should add that I would consider that such an injury to the right knee was relatively minor. It is, in my view, possible that Mr Aslam has recovered from any injury to the right knee that occurred on 21 October 2006 and that any current problems in the right knee relate to the earlier injury in 2004. These are matters, of course, that will be addressed by an Approved Medical Specialist in the assessment of WPI.

Did the applicant sustain a psychiatric and/or psychological injury?

431. The next issue to determine is whether Mr Aslam sustained a psychiatric and/or psychological injury within the meaning of s 11A (3) of the 1987 Act. The respondents disputed that the applicant had sustained a psychological disorder.
432. I accept that the assault by the two passengers in the taxi on 21 October 2006 and the further assault when he chased those passengers was an event that not only caused physical injury to Mr Aslam but also would have been frightening or terrifying.
433. I accept that Mr Aslam started to have family problems following the assault on 21 October 2006. Associate Professor Kaplan noted that after the assault, Mr Aslam went to Vancouver in Canada to stay with his wife's family for several months but separated from his wife. Mr Aslam and his wife then returned to Australia but the break was permanent. Associate Professor Kaplan noted that the police were called on three occasions and there was an AVO taken out against him. Mr Aslam and his first wife divorced in 2008. Mr Aslam then went back to Pakistan and married his second wife, Mahida.
434. Associate Professor Kaplan wrote:

“Until the subject assault, it appears Mr Aslam coped well. He immigrated to Australia, had a good marriage and was working as a taxi driver after he injured his knee.

He would return to taxi driving after the assault but had a personality change leading to anger, difficulty with customers and tensions in his marriage.

After a period (? six months) he was forced to give up taxi driving, his marriage broke down and court orders were taken out because of his violence.

He re-married and had three more children. His wife is struggling to care for him but is also the subject of his violence for which police have been called and other social interventions required.”

435. In a statement dated 27 March 2012, Mr Aslam stated that as a result of the assault on 21 October 2006, he suffered from anxiety and depression and was being treated by a psychiatrist, Dr Ishrat Ali.
436. The first diagnosis of a psychological condition following the assault on 21 October 2006 appeared to have been made by Dr Capt. Muhammad Anwar in Lahore on 7 September 2007. Dr Anwar noted that Mr Aslam suffered from sleeplessness, depressed and angry mood, irritability, manic depression and loss of memory. Dr Anwar certified that Mr Aslam was suffering from post-traumatic stress disorder and under "history" noted that Mr Aslam had been assaulted during work as a taxi driver in Australia in 2006. Dr Anwar proposed a treatment plan for cognitive behavioural therapy and a medicine plan including mood-stabilising medications as well as anti-depressants.
437. Dr Anwar issued a further medical certificate on 18 March 2013, which certified that Mr Aslam suffered from post-traumatic stress disorder as a result of robbery in taxi during working overseas in Australia. In the third medical certificate dated 25 May 2015, Dr Anwar certified that Mr Aslam was suffering from post-traumatic stress disorder and noted that Mr Aslam complained of symptoms of sleeplessness, depressed and angry mood, irritability, manic depression and loss of memory.
438. In a report dated 17 August 2009 Dr Dinnen noted that Mr Aslam stated that he was unable to sleep, sometimes started shivering when he slept, had dreams about dangerous events, got jumpy in his sleep, had lost his knowledge and memory and became very angry at times with customers. Mr Aslam said that about three times a week his mind went blank, he was not able to listen to anything. Mr Aslam told Dr Dinnen that he was always apprehensive and fearful that he might be attacked again and was constantly apprehensive about Asian passengers, particularly young people who did not pay and ran away. Mr Aslam said that he frequently felt despairing and desperate and at times cried, when he felt very bad.
439. Dr Dinnen noted that Mr Aslam had some counselling from a social worker at Centrelink on two occasions but no other counselling or treatment. Mr Aslam reported that there were ongoing problems in the family relationship and his wife had threatened to separate from him last year because he was so angry and rude. Dr Dinnen made a diagnosis of chronic post-traumatic stress disorder with associated depressive features and classified it as moderately severe. He considered the condition was stable and continued to impair functioning as described in his report.
440. In a report dated 8 March 2011 Dr Wijeratne, noted that Mr Aslam had a history of post-traumatic stress disorder/depression and associated memory loss and there appeared to be several incidents involving memory loss.
441. In a report dated 8 March 2012, Dr Ali noted that had first seen Mr Aslam on 28 February 2011. He reported that the applicant was assaulted while driving a taxi on 21 October 2006. Dr Ali said that when he first saw Mr Aslam he presented with anxiety, depressed mood, insomnia, irritability, poor concentration, difficulty in relaxing, dreams and flashbacks.
442. Dr Ali had performed a mental state examination in the initial consultation and found that there was evidence of anxiety and depressive symptoms, evidence of dreams and flashbacks, but no evidence of auditory or visual hallucinations, delusional ideas or thought disorder. He noted that Mr Aslam had difficulty in concentrating, but there was no evidence of deterioration of memory or orientation. He considered Mr Aslam was functioning at an average level of intelligence and had reasonable insight into his condition. Dr Ali considered that there was evidence of anxiety and depressive symptoms. He was of the view that there was no evidence of psychosis. Dr Ali noted that when he first saw Mr Aslam he was on Zoloft and he increased this medication to 100 mg and this had continued.

443. Moreover, in a report dated 27 May 2015, Dr Ali noted that when he initially saw Mr Aslam on 28 February 2011 Mr Aslam had symptoms of PTSD. He reported that the cause was a robbery incident while driving a taxi.
444. In a report dated 6 December 2016, Dr Akkerman noted that Mr Aslam was injured on 21 October 2006 when working as a taxi driver and while he was being robbed by two or three men in an armed robbery. Dr Akkerman noted that Mr Aslam had been seeing Dr Ali, psychiatrist, since 2011 every month and this was ongoing. Dr Akkerman made a diagnosis of post-traumatic stress disorder and major depression arising from the assault on 21 October 2006.
445. In a report dated 31 May 2017, Associate Professor Kaplan noted that Mr Aslam reported a history of an assault which occurred when he was driving a taxi with three passengers.
446. Under “current situation”, Associate Professor Kaplan noted that Mr Aslam’s major difficulty was anger, which put strain on his family and led to problems in public. He reported flashes when his eyes were closed and described thought content as “very bad things” and often recalled the assault. Associate Professor Kaplan reported that much of the anger arose from perceptions of what people, especially in public or neighbours, said about him. Mr Aslam reported other symptoms were being “pushed into a black hole by someone” and derogatory voices. He referred to visual images such as shadows and shapes. Associate Professor Kaplan considered that Mr Aslam was describing ideas of reference, if not, paranoid delusions.
447. Associate Professor Kaplan noted Mr Aslam described himself as angry and dangerous and he struggled to contain these feelings and had assaulted three people because of the perception they were saying things or a potential threat to him. He noted that Mr Aslam admitted guardedly to ideas of reference, if not paranoid delusions, when dealing with people, but not to thought interference or problems watching television. He reported Mr Aslam had memory problems, was distracted, his affect was labile, anxious and close to being distraught.
448. Under “diagnosis”, Associate Professor Kaplan noted Mr Aslam blamed his problems on the assault and continued to ruminate on the event. This account had been accepted by a psychiatrist he had seen who concluded that features such as nightmares and flashbacks were subsumed by what could only be regarded as psychotic symptoms in this interview. Associate Professor Kaplan stated that it was interesting that the psychiatrist in Pakistan, who would know his background and language, found that he had manic depressive psychosis. Associate Professor Kaplan concluded that the presentation was of a psychotic disorder but it was not possible to show this arose from schizophrenia or bipolar disorder. The diagnosis was best labelled as psychotic disorder NOS.
449. Associate Professor Kaplan concluded that the psychotic disorder would not arise from an incident such as the assault. He concluded it was not possible to show that Mr Aslam’s condition arose from the assault and the assault was not the substantial contributing factor to the condition.
450. The weight of the medical evidence supports a finding that Mr Aslam developed post-traumatic stress disorder following the assault on 21 October 2006. In making this finding I have preferred the evidence of Dr Ali, Dr Akkerman and Dr Dinnen to that of Associate Professor Kaplan. Mr Ainsworth submitted that the certificates of Dr Anwar supported Associate Professor Kaplan’s diagnosis and opinion as Dr Anwar had noted that Mr Aslam suffered from manic depression as well as sleepless, depressed and angry mood, irritability, and loss of memory. However, despite the reference to manic depression Dr Anwar made a diagnosis of post-traumatic stress disorder in September 2007, some 11 months after the assault and he continued to make that diagnosis in later certificates issued in 2013 and 2015.

Dr Anwar did not make an actual diagnosis of a psychotic disorder. It was also significant that Dr Ali, who has treated the applicant since 2011, came to the conclusion that Mr Aslam had post-traumatic stress disorder and, on mental state examination, found no evidence of psychosis. I have placed considerable weight on Dr Ali's opinion and conclusions. Dr Ali has seen Mr Aslam on many occasions since 2011 and in my view was in the best position to make a diagnosis of Mr Aslam 's psychological condition.

451. I find that Mr Aslam sustained a psychological injury arising out of or in the course of his deemed employment as a taxi driver on 21 October 2006. Mr Aslam bears the onus of proof on this issue and I am satisfied, on balance, that it has been discharged.

Was the applicant's employment a substantial contributing factor to his injury within s 9A of the 1987 Act?

452. The next issue to be determined is whether Mr Aslam's employment was a substantial contributing factor to his injury to his right knee and to the psychological injury within s 9A of the 1987 Act.

453. The respondents submitted at the hearing that employment was not a substantial contributing factor to the injury. Section 9A(1) of the 1987 Act provides that no compensation is payable in respect of an injury unless the employment concerned was a substantial contributing factor to the injury.

454. In *Badawi v Nexon Asia Pacific Pty Limited trading as Commander Australia Pty Limited* [2009] NSWCA 324, a full bench of the NSW Court of Appeal considered the provisions of s 9A of the 1987 Act. *Mercer v ANZ Banking Group* [2000] NSWCA 138 was not followed. Allsop P, Beazley and McColl JJA (Handley AJA dissenting) held that the phrase "substantial contributing factor" in s 9A involved a causative element and said:

"81 Causation is a fact-laden conclusion which the courts have been told must be based on common sense: *March v Stramare (E & MH) Pty Limited* [1991] HCA 12; 171 CLR 506; and Nunan. It is not possible and indeed would be incorrect, therefore, to lay down a principle which can be applied unbendingly to all cases. Nonetheless, we consider the following observations should be made.

82 First, and perhaps most importantly, the word 'substantial', must be given effect. It is a word of ordinary English meaning. It is a word of evaluative concept... The words of the statute should be adhered to: 'a substantial contributing factor'. The 'proper link' in the legislative context was a causal connection expressed by the words 'a substantial contributing factor', meaning one that was real and of substance. Given the conflict in the existing authority (*Mercer, Bulga* and *Dayton*), we think it important to clarify this issue.

83 Secondly, we respectfully disagree with Mason P's observation (notwithstanding that Beazley JA agreed with it at the time) that the causal requirement in s 9A is less stringent than that in s 9 (as read with s 4). If it were, there would be no point in s 9A extending to both limbs of the definition of injury. We have explained the source of Mason P's views in the comments in *Favelle Mort* on a different phrase ('a contributing factor'). As Mason P observed in *Mercer*, there is an incongruity in having a double causation test, one in s 9 and one in s 9A. However, the legislature, in seeking to remedy the lack of causal connection with employment that the second limb of s 4 has, that is, 'in the course of employment', must be taken to have seen the need to ensure that the connection of the employment with the injury under either limb was 'substantial'. Had it restricted the s 9A requirement to 'the course of employment' limb, it is possible that the required connection with the employment would have been different, depending upon which limb of s 4 was engaged. Notwithstanding that the legislative consequence is cumbersome to a degree, the intention is clear...

85 It should be said, however, that there may be circumstances where the factors considered necessary and sufficient to satisfy the test 'arising out of employment' for the purposes of s 9, are sufficient to satisfy the test in s 9A. Whether that is so will depend on the facts. Both are factual questions. The question under each section is differently expressed and must be considered separately. It is not sufficient to find that injury arose out of 'employment' and to thereby be able to conclude that the employment concerned was a 'substantial contributing factor'. Such a reasoning process is expressly proscribed by s 9A(3)."

455. Allsop P, Beazley JA and McColl JA (Handley AJA dissenting) held that in determining whether a worker's employment was a substantial contributing factor the matters specified in s 9A(2) must be taken into account to the extent that they are relevant. Their Honours considered that s 9A(2)(b) directed attention to the nature of the work performed and the particular tasks of that work and not to what the employee was doing at the actual time of the injury.

456. Basten JA concurred with the decision of the majority, considering that the causal test imposed by s 9A was more stringent than that imposed by s 4. He commented that if the conduct out of which the injury arose occurred in the course of employment and was the effective cause of the injury, absent misconduct on the part of the employee, the only conclusion reasonably open is that the employment was a substantial contributing factor to the injury. Basten JA said:

"The worker correctly submits that the words 'employment concerned' reinforce the view that it is the work activity in which the worker was actually engaged at the time of injury that is relevant. The ultimate question is whether the activity or task was a 'substantial contributing factor to an injury' bearing in mind that the concept is exegeted in section 9A(2) and 9A(3)."

457. The respondents relied on Associate Professor Kaplan's opinion in relation to the psychological injury. Associate Professor Kaplan considered that Mr Aslam had a psychotic disorder. He expressed the opinion that such a psychotic disorder would not arise from an incident such as the assault. He concluded it was not possible to show that Mr Aslam's condition arose from the assault and the assault was not the substantial contributing factor to the condition.

458. The respondents relied on the opinion of Dr Bentivoglio in respect of the right knee injury.

459. I have found that Mr Aslam sustained a psychological injury, namely, PTSD, arising out of or in the course of his deemed employment as a taxi driver on 21 October 2006. In making this finding I preferred the evidence of Dr Ali, Dr Akkerman and Dr Dinnen to that of Associate Professor Kaplan for the reasons given above.

460. In terms of the injury to the right knee, I was satisfied that Mr Aslam sustained an injury to the right knee in the incident on 21 October 2006 when he chased after the assailants and was kicked by the male assailant.

461. Considering the terms of s 9A(2) of the 1987 Act, I make the following observations and findings:

- "the time and place of injury": Mr Aslam alleged that his psychological injury and the injury to his right knee resulted from his employment as a taxi driver on 21 October 2006. I am satisfied that the assault on 21 October 2006 resulted in Mr Aslam sustaining an injury to his right knee and that the assault also resulted in the applicant suffering from post-traumatic stress disorder. I am satisfied that the contribution of the Mr Aslam's employment to his injury was real and substantial.

- “the nature of the work performed and the particular tasks of that work”: Mr Aslam was required to perform the duties of a taxi driver transporting members of the public, in circumstances where there is a risk of criminal assaults. He was assaulted by two passengers when driving T-1078 on 21 October 2006. I am satisfied that the characteristics of the work performed made a real and substantial contribution to the Mr Aslam’s injury.
- “the duration of employment”: is a neutral factor of no consequence.
- “the probability that the injury or a similar injury would have happened anyway, at about the same time or at the same stage of the worker’s life, if he had not been at work or had not worked in that employment”: in my view there is really no persuasive evidence of any probability that the injury would have happened anyway at the same stage of Mr Aslam’s life if he had not been employed as a taxi driver on 21 October 2006 and assaulted by the two passengers.
- “the worker’s state of health before the injury and the existence of any hereditary risk”: in my view this factor is of no significant relevance. I accept that Mr Aslam had a pre-existing injury to his right knee in his prior employment at Bilal Brothers. However, Mr Aslam has stated and I accept that the assault caused an aggravation to that pre-existing injury. There was no history of any pre-existing psychological condition.
- “the worker’s lifestyle and his or her activities outside the workplace”: there are, in my view, no significant lifestyle matters relevant to this claim.

462. On the facts of this matter and on a consideration of the relevant authorities cited, I find that the injury to Mr Aslam’s right knee and the psychological injury to Mr Aslam arose both out of and in the course of employment and that there was a causal relationship between the injury and the work that Mr Aslam was required to do, that is, there was a causal connection with his employment. I am satisfied that his employment was a substantial contributing factor within the meaning of s 9A of the 1987 Act.

463. In all the circumstances, I am satisfied that Mr Aslam sustained a psychological injury, post-traumatic stress disorder, as a result of the assault that occurred at work on 21 October 2006, and that his employment was a substantial contributing factor to that injury. Further, I am satisfied that Mr Aslam sustained an injury to his right knee as a result of the assault that occurred at work on 21 October 2006, and that his employment was a substantial contributing factor to that injury.

464. The matter is remitted to the Registrar to refer to an Approved Medical Specialist for assessment of WPI of: (a) the cervical spine and right lower extremity, and (b) the primary psychological injury as a result of the injury that occurred on 21 October 2006.

465. The claim for medical expenses and weekly benefits and any other outstanding issues to be determined following the issue of the Medical Assessment Certificates by the Approved Medical Specialists.

SUMMARY

466. I find that on 21 October 2006 the applicant was driving taxi T-1078 pursuant to a contract of bailment between himself and the first respondent, Ramesh Tanwar.

467. I find that the applicant is a deemed worker of the first respondent pursuant to cl 10 of Sch1 of the 1998 Act.

468. I find that the first respondent was not insured as required by the 1987 Act at all relevant times.
469. I find that on 21 October 2006 the applicant suffered injury to his neck, back and right lower extremity (knee) in an assault and that he suffered a psychological condition as a result of the assault.
470. I find that the employment with the first respondent was a substantial contributing factor to the injury to the right knee and the primary psychological injury as a result of the assault on 21 October 2006.
471. The third respondent, the Workers Compensation Nominal Insurer, is liable to make payments as if it were the insurer of the first respondent at all relevant times.
472. Award in favour of the second respondent.
473. Award in favour of the fourth respondent.
474. Matter to be remitted to the Registrar to refer to an Approved Medical Specialist for: (a) assessment of WPI of the cervical spine and right lower extremity (knee) attributable to the injury on 21 October 2006, and (b)-assessment of WPI of a psychological condition attributable to the injury on 21 October 2006.
475. Matter to be listed for further telephone conference in relation to the claim for weekly benefits and medical expenses following the issue of the Medical Assessment Certificates.

