November 2025 Edition

Melino Legal Quarterly Newsletter

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MELINO LEGAL

SAET Practice Directions 2025

Effective 25 September 2025, the *South Australian Employment Tribunal Practice Directions* were updated to include several amendments.

Key Changes

A new Practice Direction has been inserted to clarify that settlement conferences presided by a Presidential member are to be treated as genuine attempts at achieving a settlement. Parties should therefore attend settlement conferences prepared to consider proposals from other parties and not maintain unrealistic or unreasonable positions.

Further, Practice Direction 27(5) has been amended to reflect that, unless directed otherwise, settlement conferences and mediations will be held in person, with personal attendance from all parties required.

Duryea v Electrolux Home Products [2025] SAET 78

This case involved a claim for noise induced hearing loss ('NIHL') and tinnitus said to arise from employment with Electrolux Home Products. Specifically, Kelly DPJ was tasked with determining the level of Mr Duryea's level of whole person impairment ('WPI') and entitlements, which required a comparison and analysis of differing medical opinions.

Audiology Results

- On 19 April 2023, Dr Diamantis assessed Mr Duryea as having 3.6% binaural hearing loss ('BHL') after deduction for presbycusis and made no allowance for tinnitus.
- On 5 July 2023, Dr Fagan assessed Mr Duryea as having 7.2% BHL after deduction for presbycusis and non-work related hearing loss but added a 3% loading for tinnitus, totaling a 10.4% BHL, which equates to a WPI of 5%.

Despite the approximately 3% difference between the assessments of Dr Fagan and Dr Diamantis (excluding loading for tinnitus), neither expert was troubled by the disparities as they were within the three point test/re-test variation.

Rather, the major issue was the fact that Dr Fagan assessed 3% for tinnitus whereas Dr Diamantis made no assessment for tinnitus. The differences in ratings appeared to be on account of obtaining different histories from the applicant as to his symptomology. For example, Mr Duryea told Dr Fagan that his tinnitus had an impact of his activities of daily living, whereas he told Dr Diamantis it did not impact his activities of daily living. Dr Diamantis stated that if he was given the history taken by Dr Fagan, he would likely have made an assessment of between 1 - 2%. The loading for tinnitus was crucial in this case as a 1% loading would have resulted in a total of 8.2% BHL, which would not reach the minimum 5% WPI required for compensability. However, a 2% loading would take the total BHL to 9.2%, which equates to 5% WPI, meaning Mr Duryea would be entitled to $14,635.00 in lump sum compensation.

Kelly DPJ found that by comparing Mr Duryea's symptoms with the *Impairment Assessment Guidelines*, Dr Diamantis' assessment of an additional 1-2% for tinnitus seemed to be a better fit than Dr Fagan's assessment of 3%. However, her Honour did not consider Dr Fagan's assessment of 3% to be unreasonable and for that reason she held that the applicant had a WPI of 5% and was entitled to reimbursement for the cost of hearing aids. In making her decision, DPJ Kelly stated, *"it is... of critical importance to all parties that assessors exercise particular care at these low levels of BHL to ensure accuracy and to explain the rationale for their opinions as to the allowance for tinnitus."*

Hamilton v RTWSA [2025] SAET 111

Background

In this case, the respondent determined that the applicant had nil entitlement to lump sum compensation pursuant to s 58 of the *RTW Act* as a result of her noise induced hearing loss and tinnitus. That determination relied on the report of Dr Garret Hunter wherein he assessed the applicant as having a 4% WPI with nil assessment for tinnitus.

The applicant challenged the respondent's determination on the basis that Dr Hunter did not consider two medical certificates recording the applicant's history of headaches associated with tinnitus. However, a further report of Dr Hunter confirmed that he did in fact consider those medical certificates when writing his report.

On that basis, consent orders were made confirming the respondent's determination and reserving the question of costs.

Application for Adverse Costs Order

At a later date, the respondent made an application for adverse costs against the applicant seeking that the applicant be entitled to a reduced amount of the cost of proceedings pursuant to s 106(3) of the *RTW Act*, or, in the alternative, not entitled to costs pursuant to s 106(7) of the *RTW Act*.

Section 106(3)

Section 106(3) of the *RTW Act* provides that if the Tribunal is satisfied that a party has acted unreasonably, frivolously or vexatiously in bringing or in the conduct of the proceedings, the Tribunal may decline to make an award for costs in favour of the party or reduce the amount to which they would otherwise be entitled. It is for the party seeking to invoke the section to persuade the Tribunal that it should be exercised.

The respondent submitted that the applicant "*either knew, or ought to have known*" that there was no prospect of success based on the initial report of Dr Hunter and the respondent's letter confirming that Dr Hunter had been provided with the medical certificates.

Rossi DPJ held that the applicant had not acted unreasonably in the conduct of the proceedings as prior to receiving Dr Hunter's further report, there was no confirmation from Dr Hunter himself that he had considered the medical certificates. Section 106(3) of the *RTW Act* therefore did not apply.

Section 106(7)

In *RTWSA v Sweeney*, the Court explained that s 106(7) of the *RTW Act* requires the following in order to be made out:-

1. A dispute concerning the amount of permanent impairment compensation determined by the Compensating Authority to be due to a worker;
2. An amount offered by the relevant Compensating Authority to settle the matter before the matter proceeds to a hearing before the Tribunal;
3. A hearing of that dispute in the Tribunal;
4. An award made by the Tribunal following the hearing of that dispute;
5. The award made by the Tribunal is "*less than, or the same as, or less than 10% above*" the amount offered by the Compensating Authority.

Based on application of the criteria set out in *Sweeney*, it was evident that the requirements of s 106(7) were not met in this case as there had been no hearing of the dispute in the Tribunal.

Decision

Rossi DPJ ultimately held that an order should be made that the applicant be entitled to her reasonable costs of representation in accordance with s 106(1) of the *RTW Act*.

Ramona Ramamoorthy v RTWSA [2025] SAET 88

This case concerned an interlocutory application by the Return to Work Corporation of South Australia ('the Corporation') seeking to strike out an affidavit of evidence filed by the applicant, Ms Ramona Ramamoorthy, in the substantive proceedings.

Background

On 13 August 2024, Ms Ramamoorthy lodged a claim for compensation under the *Return to Work Act 2014* (SA) ('*RTW Act*') for loss of wages and medical expenses relating to complex dysphagia (difficulty swallowing). She alleges that the condition developed as a complication of COVID-19 vaccinations received on 11 July and 1 August 2021.

The Corporation accepted that Ms Ramamoorthy experienced dysphagia following the vaccinations but rejected her claim on the basis that the vaccinations were not required under her contract of employment and therefore did not arise from employment.

In the lead up to the trial listed for 1 December 2025, Ms Ramamoorthy's solicitor filed, without leave or notice, an affidavit sworn by a long-time friend of the applicant. The Corporation applied to have the affidavit struck out on the basis that it was inadmissible.

Submissions

Counsel for the respondent submitted that the affidavit should be struck out as it was filed without leave and contained inadmissible evidence, including hearsay, irrelevant material, and opinion evidence from a non-expert.

The affidavit also failed to comply with formal requirements, as it did not include a jurat clause or a statement verifying that the contents were true or based on personal knowledge. The Corporation further submitted that the applicant acted unreasonably in persisting with reliance on the affidavit after being informed of its deficiencies.

Counsel for the applicant argued that the hearsay evidence was admissible as an exception to rebut a suggestion of recent invention. It was also submitted that the hearing served a useful purpose by clarifying the Corporation's position on causation and assisting with directions for further evidence ahead of trial.

Decision

Rossi DPJ struck out the affidavit in its entirety and declined to award the applicant her costs of the application.

His Honour found that the affidavit did not comply with formal requirements and was largely comprised of hearsay, irrelevant material, or inadmissible opinion evidence. The content was vague, speculative, and did not relate to any matter in dispute between the parties. It was therefore not reasonably arguable that the affidavit was admissible.

His Honour also found that Ms Ramamoorthy acted unreasonably in persisting with reliance on the affidavit after being notified of its deficiencies. Pursuant to s 106(3)(c) of the *RTW Act*, the Tribunal ordered that Ms Ramamoorthy was not entitled to recover any of her costs of and incidental to the hearing of the respondent's application.

Third Edition of the Impairment Assessment Guideline

As of 1 October 2025, the new Third Edition of the *Impairment Assessment Guidelines* ('*IAGs*') apply to all workers undergoing a Permanent Impairment Assessment ('PIA'). The *IAGS* have been developed with the intention of facilitating a fair, objective and consistent approach to assessments with significant changes that affect both requestors and assessors.

New Obligations of Requestors

The new *IAGs* introduce a number of obligations for requestors. A new mandate has been introduced for the booking of assessment appointments. Requestors are also required to provide information to the worker prior to the assessment regarding the assessor's role, what impairment is being assessed and notify the worker that physical examination may be undertaken. A significant procedural change is the introduction of a 20-business day consultation period for workers to consider the requestor's draft letter and provide feedback.

New Obligations of Assessors

The new *IAGs* place a greater onus on assessors. In regard to history taking, reports must contain information based on the assessor's own history taking and clinical examination and record the use of other documents when forming opinion. Assessors are also required to provide their reasoning when deductions are or are not made, provide justification for WPI, and explain any inconsistencies in the worker's presentation. The *IAGs* emphasise that the assessed condition must be a diagnosed condition.

Upper Extremity Amendments

Changes affecting upper extremity assessments require the assessor to document their rationale when calculating impairment using loss of range of motion. Inconsistencies in a worker's range of motion must be addressed in the assessor's report. Under the new *IAGs*, frozen shoulder injuries cannot be rated until at least 18 months post onset of symptoms.

Lower Extremity Amendments

The new *IAGs* emphasise the need for the assessor to justify method selection and to document and justify results. Reports must also address any inconsistencies in range of motion. This chapter introduces new requirements for specific radiographic assessment of joints. There are also notable changes to the assessment requirements for ankle, hindfoot and Lis Franc injuries as well as the addition of another class descriptor for total ankle replacement outcomes. A new class 4 (very poor) has been introduced with the requirement that assessors fully justify this categorisation.

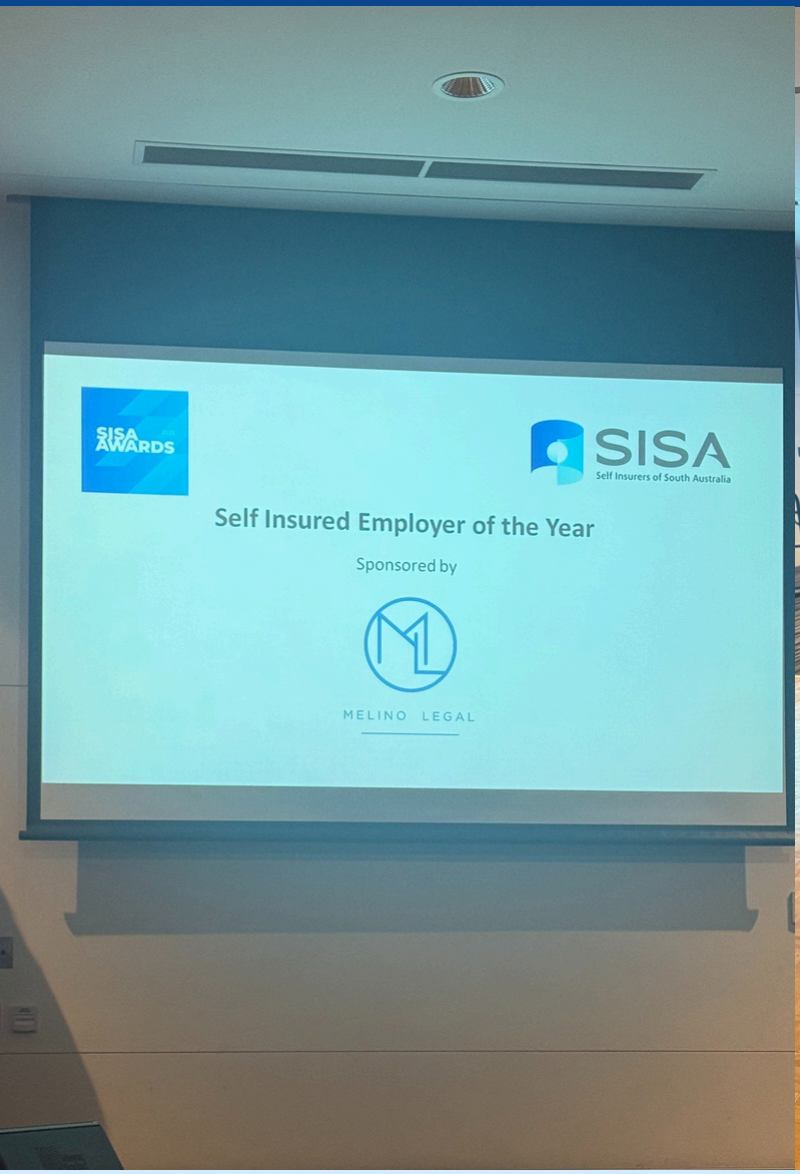
Complex Regional Pain Syndrome ('CRPS') Amendments

Significant changes to CRPS provisions have been introduced. The pre-requisite requirements have been increased: CRPS must now be present for 18 months and be considered 'stabilised'. A diagnosis must now be made by an appropriate medical specialist and treatment advice offered to the worker. The new *IAGs* reduce physical signs that must be elicited at the time of PIA from four categories to three categories.

Hearing Loss Amendments

The new *IAGs* significantly amend hearing loss provisions. It is now mandated that assessments be conducted in person, and assessors set out the worker's history and document non-work impairment. The *IAGs* place a greater onus on assessors to justify use of frequencies outside of 2000 – 4000 Hz.

2025 SISA Awards Night



Melino Legal proudly sponsored the 2025 SISA Awards, held at the Adelaide Convention Centre on Friday 7 November 2025.

The SISA Awards celebrate excellence and continuous improvement in workplace health, safety, and injury management. They highlight the commitment of South Australia's self-insured employers to fostering safer, healthier, and more supportive workplaces across the state.

We extend our congratulations to Uniting Communities, recipients of the Melino Legal Self-Insured Employer of the Year Award, for their outstanding leadership, strong employee engagement, and innovative strategies in injury prevention and employee wellbeing.

The Melino Legal team thoroughly enjoyed the evening, taking the opportunity to connect with clients, colleagues, and industry peers. It was a pleasure to celebrate the achievements of organisations dedicated to advancing safety and wellbeing in the workplace.

Employee Spotlight

We are very excited to announce that we have recently welcomed Karmilla Chenia on board in the capacity of Special Counsel.

Karmilla Chenia, Special Counsel

Karmilla is a passionate and driven Special Counsel with a dynamic background in personal injuries litigation, workers compensation, and insurance law.

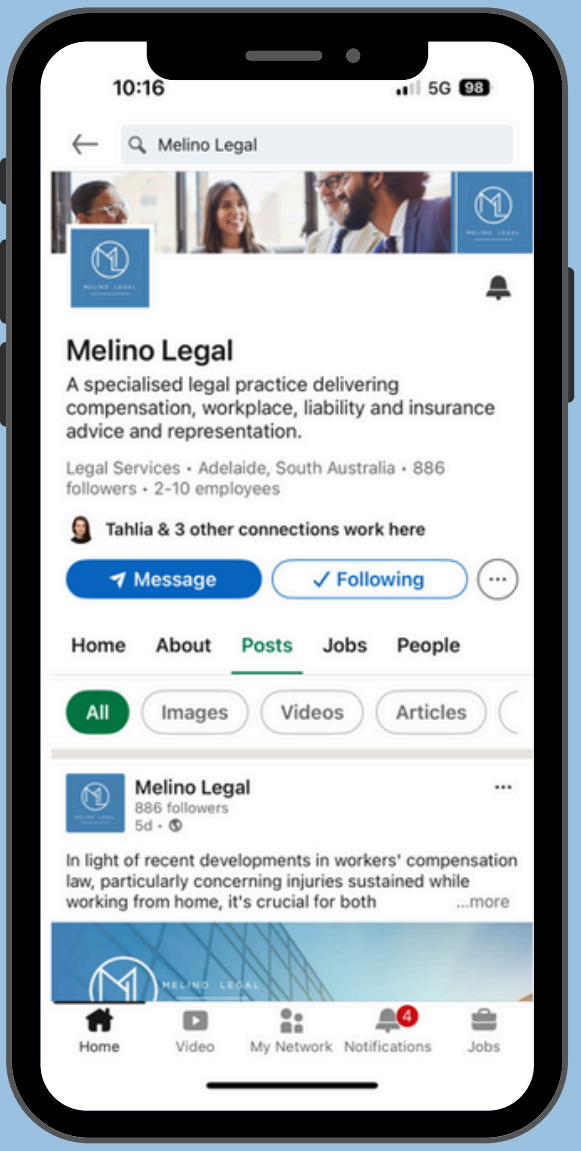
Over the course of her career, Karmilla has worked closely with individuals, employers, and insurers to provide pragmatic legal advice that balances technical precision with compassion, achieving client centered outcomes.

Karmilla brings knowledge from both sides of the fence, having previously represented injured workers, as well as employers, self-insurers, and the Compensating Authority in South Australia. This breadth of experience gives her a uniquely rounded perspective and enables her to navigate complex matters with confidence and clarity.

Karmilla brings a depth of knowledge and energy to the firm and is recognised by her peers as a strong advocate.

Outside of work, Karmilla enjoys keeping active through long walks, gym and pilates, and also enjoys cooking and reading. Her warmth and positivity have quickly made her a valued and much-appreciated member of the team!

Connect with us on LinkedIn



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