

Melino Legal Quarterly Newsletter



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MELINO LEGAL

Impairment Assessment Guidelines (3rd edn)

On 1 October 2025, the new Third Edition of the Impairment Assessment Guidelines (IAGs) will come into effect, which is aimed at improving the accuracy, consistency and fairness of impairment assessments. The Third Edition was drafted with input from 55 medical professionals and two rounds of public consultation, following concerns about the rushed consultation process and calls for greater parliamentary scrutiny.

Key Changes

The new IAGs aim to provide greater clarity about the responsibilities of compensating authorities, workers, and their representatives prior to assessments. It has also been noted that some of the amendments will result in a higher threshold to be met for the requisite 5% whole person impairment.

Some of the key changes to the IAGs include a narrower methodology for assessing impairment, as well as a new assessment tool for Complex Regional Pain Syndrome.



Smout v RTWSA [2025] SAET 36

In this case, Ms Smout's claim for compensation for psychological injuries sustained in the course of her employment was accepted by the respondent. However, a further claim for income support and medical expenses were rejected on the basis that she was not a seriously injured worker. Unsurprisingly, Ms Smout challenged that decision.

Ms Smout underwent a permanent impairment assessment ('PIA') pursuant to s 22 of the *Return to Work Act 2014* (SA) ('RTW Act') conducted by Dr Ford, Consultant Psychiatrist. Dr Ford assessed Ms Smout's impairment as 45% whole person impairment and declined to make any deduction for pre-existing or non-related impairments. As a result of Dr Ford's failure to make any deductions, the respondent submitted that Dr Ford's assessment was not in accordance with the IAGs and therefore sought that the matter be referred to an Independent Medical Advisor ('IMA') pursuant to s 121 of the *RTW Act*. The applicant agreed to this.

It was the respondent's view that, it being accepted that the assessment of Dr Ford was non-compliant, the referral to an IMA should be for the entire PIA to be performed afresh. Contrastingly, the applicant contended that the only non-compliance related to deduction and therefore the principal assessment of 45% should stand, with the IMA solely considering the level of any deduction for pre-existing or unrelated impairments. In making this contention, the applicant argued that the use of the word 'any' in s 121 of the *RTW Act* means that there is no need for the whole of the PIA to be reassessed, rather a discrete issue can be referred.

Crawley DPJ stated that 'the question of deductibility is an inextricable part of the assessment process of whole person impairment for psychological injury.' His Honour explained that to have one assessor determine the overall impairment and another assessor determine the level of any deduction for pre-existing or non-relevant impairments would offend the one assessment principle. As a result, it was held that 'once it has been conceded that the PIA was non-compliant with the IAG, where only one impairment is being considered, the inevitable result is that the entire assessment must be re-undertaken to enable the court to determine the compensable whole person impairment.'

Mujakovic v Helping Hand Aged Care Inc [2025] SAET 40

This case involved an Application for Directions made by the respondent to have the applicant's barrister, Mr Michael Saies, removed or restrained from acting as counsel. This application was made on the basis that Mr Saies and the main expert witness in the dispute, Dr Andrew Saies, were brothers.

Submissions

Counsel for the respondent argued that s 37 of the *South Australian Employment Tribunal Act 2014* ('SAET Act') provides the South Australian Employment Tribunal ('SAET') with power to 'do whatever is necessary for the speedy and fair conduct of the proceedings', hence enabling the orders sought to be made. It was further argued that there was a conflict of interest which could undermine the fairness and justness of the trial.

Contrastingly, counsel for the applicant submitted that the court does not have the power to remove Mr Saies as counsel because either inherent or supervisory jurisdiction is required to make such an order; however, s 37 of the SAET Act does not provide that power. Further, it was submitted that r 99(e) of the *Australian Bar Association Barristers' Conduct Rules* merely provides that a barrister may return or refuse a brief if required to cross-examine or criticise a friend or relation, not that they are required to do so.

Findings

In making his decision, Calligeros DPJ referred to *Lyons v Legalese Pty Ltd*, which made it clear that the power to restrain a practitioner from acting in a

proceeding in South Australia is vested in the Supreme Court and is part of the Supreme Court's supervisory jurisdiction. His Honour noted that unlike the Supreme Court, the SAET does not have inherent or supervisory jurisdiction. Further, His Honour held that s 37 of the SAET Act is not broad enough to make the orders sought by the respondent without relying on any inherent or supervisory jurisdiction. Therefore, Calligeros DPJ held that the SAET did not have jurisdiction to make the orders sought.



Paech (nee Longford) v Dept for Education **[2025] SAET 41**



This case involved an Application for Directions made by the applicant seeking production of surveillance footage which was provided to an Independent Medical Examiner ('IME').

Background

In this case, the applicant's claim for compensation for a chronic laryngeal hypersensitivity ('CLH') injury due to being regularly exposed to sanitisers at work as a result of COVID-19 procedures was accepted by the respondent. Ms Paech subsequently submitted a further claim for injuries to her cervical spine and left shoulder, which she claims arose as a consequence of her CLH, as well as a claim for medical expenses associated with the CLH.

IME & Surveillance

Following provision of an IME report which was generally supportive of Ms Paech's claim for CLH, the respondent provided the IME with surveillance footage of Ms Paech which caused the IME to alter his opinion, stating, 'I would recommend that the worker's presenting symptomatology and diagnoses be re-evaluated in the light of the accompanying footage.'

Determination

Following provision of the further report, the respondent determined to reject the applicant's claim for medical expenses; however, no mention was made of either of the IME reports in the

determination. Despite this, the applicant submitted that the respondent must have relied upon the further report in determining to reject the claim, hence requiring the surveillance footage to be produced pursuant to r 56(8)(c) of the *SAET Rules 2024*.

Findings

Crawley DPJ stated that whilst he is satisfied that the second IME report was based upon the surveillance footage, he is not satisfied that the respondent's decision to reject the medical expenses claim relied upon the opinion in that report. Rather, the further report may reinforce a decision already made.

His Honour further held that, as submitted by the respondent, requiring the surveillance footage to be produced prior to cross-examination would undermine procedural fairness as Ms Paech would be able to prepare her evidence. For these reasons, Crawley DPJ refused the applicant's application for production of the surveillance footage.

Brown v RTWSA [2025] SAET 44

Facts

In August 2020, while demolishing a brick wall, a clump of bricks struck Ms Brown's inner left thigh, consequently injuring her saphenous nerve. As a result, approval was granted for Ms Brown to have a permanent implantation procedure of a neuromodulation device to relieve her symptoms. However, in August 2024, Ms Brown was involved in a motor vehicle accident when another car failed to give way at a stop sign, consequently driving into the left hand side of Ms Brown's vehicle. As a result of this collision, Ms Brown's neuromodulation device was damaged, causing her pain. The device therefore needed to be surgically removed and replaced or repaired.

Ms Brown sought approval under s 33(17) of the RTW Act to have the cost of the abovementioned services covered by Return to Work SA. However, the respondent rejected this application on the basis that '[t]he claimed cost is not covered by your benefits package as it was not reasonably incurred in consequence of you having suffered a work injury.' The respondent further explained that, in its opinion, the motor vehicle accident caused the recent issues with the device and should therefore be considered a *novus actus interveniens* (an intervening event that has broken the chain of causation) because 'absent the motor vehicle accident, none of this treatment would be required.'



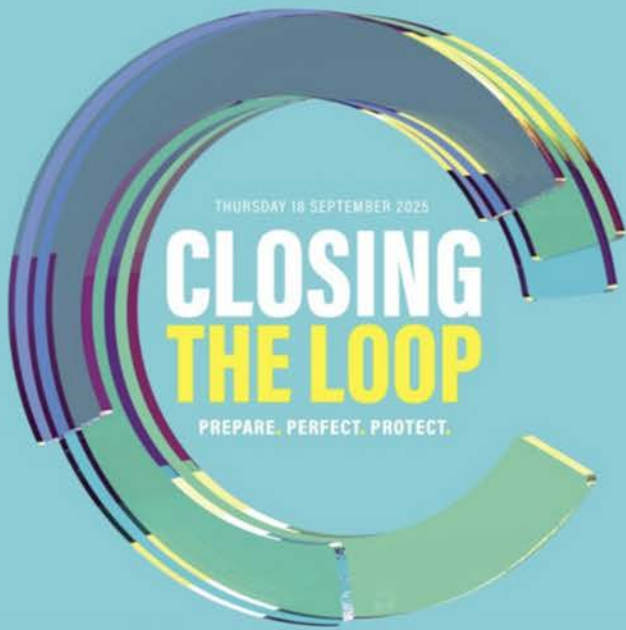
Decision

Section 33(1) of the RTW Act provides that the test for entitlement to medical and like expenses is whether the costs 'are reasonably incurred in consequence of having suffered a work injury.' Gilchrist DPJ explained that 'in consequence' is less stringent than the common law test of causation but it involves more than a 'but for' test. Further explaining this test, Gilchrist DPJ stated:-

'[N]otwithstanding a connection between the work injury and the later need for treatment, the significance of or circumstance of some other cause contributing to the need for such treatment might be such that it would be unfair, unreasonable or unjust to hold the compensating authority liable to meet it.'

His Honour explained that this would be the case in circumstances where the injured worker was driving at high speed with reckless indifference for their own safety and the safety of others, and in contravention of medical advice that they are not to drive. However, His Honour noted that, in this case, there is no evidence to suggest that Ms Brown was doing anything other than driving normally at the time of the accident and there was no medical evidence indicating that she should not have been driving. Therefore, had she not sustained the original injury, she would not now need the surgery to investigate and repair or replace the device. Consequently, Gilchrist DPJ was satisfied that the costs of surgery were incurred in consequence of Ms Brown's work injury.

PROUD SPONSOR



Skytrust Closing the Loop Conference

Melino Legal is sponsoring the 2025 Skytrust Closing the Loop Conference, taking place on 18 September 2025 at the Morphettville Racecourse.

This event aims to bring together leaders in workplace health and safety, injury prevention, and rehabilitation, all with a shared goal: improving return to work outcomes and promoting employee wellbeing.

It promises to be an inspiring day of insight, innovation, and connection – we look forward to seeing you there!

SISA Forum

Melino Legal was proud to sponsor the Self Insurers of South Australia Forum on 19 June 2025, generously hosted by JLT Australia. The event brought together a diverse lineup of expert speakers, offering thought-provoking insights into the evolving landscape of injury management and legal frameworks.

Dr Shiva Gunapu, Consultant Psychiatrist, and Dr Sara Lucas, Clinical Neuropsychologist, delivered a compelling joint presentation on post-concussion syndrome, and barrister, Mr Alex Ward AM, shared his unique perspective on psychiatric injuries, sharing reflections 'from the bar and the bench'. Melino Legal's own, Ms Tahlia Melino, provided guests with an analysis of recent case law and some of the significant updates introduced in the Third Edition of the IAGs.



Employee Spotlight

Excitingly, this quarter we have welcomed two new law clerks! Find out more about them below.



Melanie O'Callaghan, Law Clerk

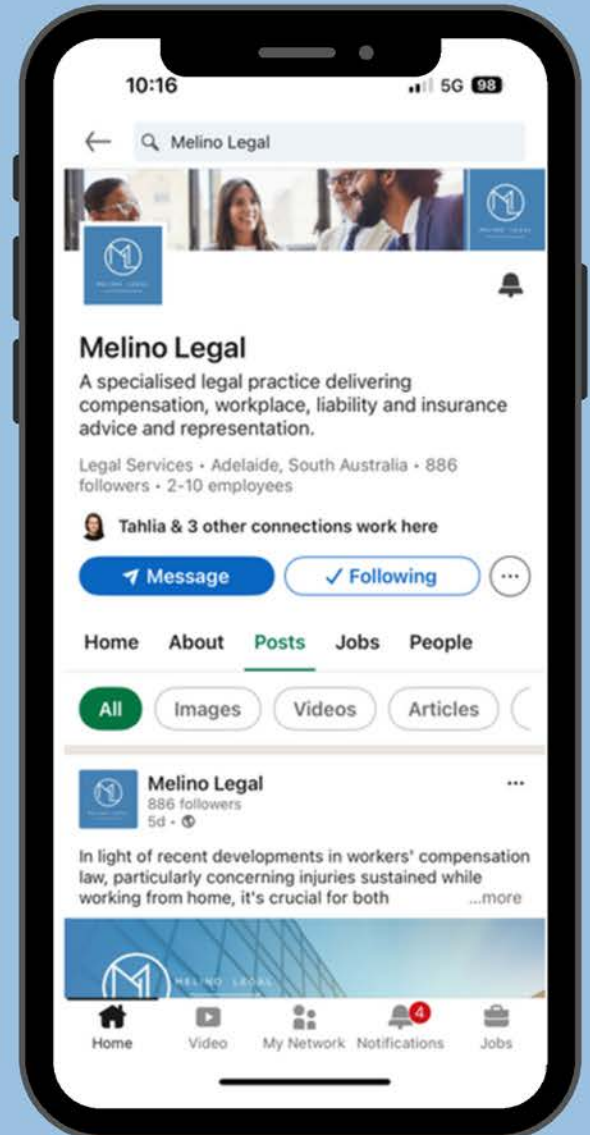
Melanie is nearing the completion of her legal studies and will finish her Graduate Diploma in Legal Practice (GDLP) in July and is set to graduate with a Bachelor of Laws and Legal Practice (LLB) from Flinders University in late 2025. With a naturally analytical mindset and a passion for complex problem-solving, Melanie was drawn to the legal profession for its intellectual challenges and dynamic nature.

During her placement with us, Melanie developed a strong interest in workers compensation and is eager to commence her legal career in this area of practice. Her intelligence and critical thinking skills make her a valuable asset to our team. Combined with her approachable nature, sharp wit, and sense of humour, Melanie brings a positive energy to the office, while consistently delivering meaningful contributions.

Originally from Mildura, Melanie enjoys returning home to spend time with her family, where she is the eldest of four siblings. Never one to shy away from a challenge, she is currently training for her first (and self-proclaimed last) marathon, demonstrating her determination and drive both inside and outside of the workplace.



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