



Practice Note TITLE	Approval of funding for Counsel at teleconference
ILARS Guideline reference	4.2.1, 5.2.1 and 5.2.2
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Version	1

Purpose

This Practice Note provides guidance on the practice and implementation of clauses 5.2.1 and 5.2.2 of the ILARS Funding Guidelines (Guidelines) as they apply to approval of funding for Counsel's attendance at teleconferences.

This Practice Note includes:

- The operational rules and criteria for IRO to approve funding for Counsel's attendance at teleconference
- The information required to support a request for funding for Counsel's attendance at teleconference
- The procedure to be followed when requesting approval of funding for Counsel at teleconference

Criteria, Practice and procedure

Criteria

IRO will apply the following criteria when considering a request for funding for counsel's attendance at teleconference:

- The attendance of counsel at teleconference is reasonably necessary to progress a claim or matter (clause 4.2.1).
- Counsel briefed by a Lawyer must be an IRO Approved Barrister (clause 5.2.1 of the Guidelines)
- Whether Counsel is being asked to assist on fundamental aspects of the law and practice (clause 5.2.1 of the Guidelines).

Practice

IRO considers it inappropriate to fund both lawyers and Counsel for the same work. Approved Lawyers are funded to advocate for injured persons in the Personal Injury Commission, including at teleconferences. Most matters will not reasonably require funding for Counsel to appear at teleconference.

Where IRO considers Counsel is being asked to assist on fundamental aspects of the law and practice we may make the grant of funding on the basis that professional fees will be reduced at the conclusion of the matter

IRO expects that, where Counsel appears at teleconference, the Approved Lawyer will also appear to instruct.

Procedure

When an Approved Lawyer wishes to seek funding for Counsel to appear at teleconference and believes the request will meet the criteria they will send an email to ILARSALmail@iro.nsw.gov.au:

- Making the request as soon as possible after the Approved Lawyer forms the view that Counsel's assistance will be necessary and with sufficient time for the ILARS grant manager to consider the request and respond
- Providing submissions addressing the criteria
- Attaching any material or evidence necessary to support the request
- Identifying the name of counsel, where possible

Where the request for funding is not, or not adequately, supported by submissions and material/evidence the ILARS grant manager may request additional information or decline to make the grant of funding. In addition, the need to request additional information may result in a delay in finalising IRO's decision.

Example

Examples where it **may** be appropriate to fund Counsel (and not reduce Approved Lawyer professional fees) include:

- The matter involves inherent complexity, so as not to constitute fundamental aspects of the law or practice (such as questions of law, novel or complex issues, or procedural requirements)
- Disputed death benefits claims
- There are multiple Respondents
- Matters relisted before a Member for a teleconference following an appeal
- The Lawyer is inexperienced and has received restricted approval under clause 1.3.2 of the Guidelines, requiring early assistance from Counsel as they develop their acquaintance with the law and practice.
- Where an inexperienced junior Approved Lawyer requires assistance for a teleconference, consideration **may** be given to an advice from counsel.

Considerations where it may **not** be appropriate to fund (without professional fees being reduced) include:

- Where the Approved Lawyer is experienced in workers compensation law and practice.
- The matter involves fundamental aspects of the law and practice (including standard claims or disputes for statutory benefits). It should be noted that many standard claims do have elements of complexity which will not, by themselves, make the assistance of counsel reasonably necessary
- There is no utility or reasonable necessity for Counsel to appear (the matter is likely to be listed for a conciliation/arbitration to deal with the matters in dispute).

- Where the Lawyer is not available to attend the teleconference (clause 5.2.10).