



COSTS DISCLOSURE REASONABLE STEPS

The Legal Profession Uniform Law (NSW), (the Uniform Law), the Legal Profession Uniform Law Application Act 2014 together with subordinate legislation commences in NSW on 1 July 2015. It replaces the Legal Profession Act 2004 and the Legal Profession Regulation 2005.

Main disclosure requirement

Under the Uniform Law¹ a law practice must provide the client with information disclosing the basis on which legal costs will be calculated and an estimate of the total legal costs.

If there is any significant change to anything previously disclosed to the client the law practice must provide the client with information disclosing the change including any significant change to the legal costs that will be payable by the client, together with information about the client's rights;

- to negotiate a costs agreement with the law practice; and
- to negotiate the billing method and
- to seek assistance of NSW Commissioner in the event of a dispute about legal costs; or
- sufficient and reasonable amount of information about the impact of any change on legal costs that will be payable to allow the client to make informed decisions about the further conduct of the matter.

Client's consent and understanding

If disclosure is made under the main disclosure requirement a law practice must take all reasonable steps to satisfy itself that the client has understood and given consent to the proposed course of action for the conduct of the matter and the proposed costs².

Reasonable steps

The Uniform Law does not provide a definition of 'all reasonable steps'. However, good communication skills will no doubt feature strongly in their implementation.

Reasonable steps suggestions for new non-commercial or government clients

1. Ask your client to complete a client information sheet in your presence. This may provide some insight into their literacy and or capacity. If you detect a barrier to effective communication a further conference will be required where an interpreter or support person can be present.
2. Always identify your client. Law Cover has a checklist³.
3. Ask your client what he/she wants to achieve. Approach your client's legal problem from their perspective.
4. Never confirm your client's instructions until you have all preliminary search results, including conflict of interest searches and perused any relevant documents in your client's possession.
5. Explain legal options and an estimate of legal costs associated with each legal option.
6. Let your client know that they should feel comfortable about asking questions and that you expect him/her to do so.
7. Explain in detail the client's proposed course of action in words he/she can understand.
8. Ask the client to describe in their own words the proposed course of action and their understanding of the costs involved - don't interrupt, it's the client's understanding not yours! However, you may need to correct your client's understanding before you proceed to the next step.
9. After the client engagement interview record a contemporaneous file note of the interview. Take care to record the words the client used when describing their understanding of the proposed course of action and the costs.
10. Write a detailed letter to the client confirming your retainer. Include the following heading in your retainer letter: You confirmed that you understood the proposed course of action and the costs. You said [record your client's own words].
11. If there is any significant change to anything previously disclosed to the client provide the client with information disclosing the change, including any significant change to the legal costs that will be payable by the client. Then repeat steps 3-10 above.





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Tips for assessing understanding⁴

- Does the client understand the particular contract they are deciding about (that is, the cost agreement and written disclosures) and its nature rather than any other contract or contracts in general?
- Does the client understand what you are going to do for him/her and why you are doing it?
- Does the client understand the contract when they are signing it? Not necessarily at an earlier or later time.
- Does the client understand the 'effect' of the contract and the ramifications of carrying out the contract? That is, that he/she will need to pay legal costs and may become liable to pay legal costs of the other side in litigation.

Questions to ask your client upon entering into a cost agreement⁵

- Can you explain in your own words what the cost agreement is about?
- If you sign this agreement what happens next?
- Do you have to pay anything to me?
- Do you have to continue instructing me?
- What happens if you stop instructing me?
- Tell me about some of the important parts of the contract?
- If you do sign the agreement can you end it later if you want to? If so, how?
- Did you talk to any family or friends about engaging a solicitor? If so, what did they think about it?

Guidance only

The steps and suggestions outlined in this fact sheet are for guidance only. What reasonable steps a law practice takes to satisfy itself that the client has understood and given consent to the proposed course of action for the conduct of the matter and the proposed costs are ultimately at the discretion of the law practice.

Further Information

For further assistance or information please contact:

Professional Standards Department
The Law Society of New South Wales

Call: (02) 9926 0115

Email: psd@lawsociety.com.au

¹ Legal Profession Uniform Law (NSW) s174(1)

² Legal Profession Uniform Law (NSW) s174(3)

³ <http://lawcover.com.au/?s=identification>

⁴ http://www.publicguardian.justice.nsw.gov.au/Documents/capacity_toolkit0609.pdf

⁵ *ibid*