

Useful Tips - Your Liability Declaration Form



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During previous Declaration years, we identified several areas where consistent queries were raised. We've developed this useful tip sheet to assist you in completing your Liability Declaration Form.

What & How-to Declare in your Liability Declaration

Below are some points to think about when you are completing your Liability Declaration Form by Sections.

Agency Activities Section

- **Agency Activities** – DO provide as much details as possible. This is to assist us to understand the activities and potential exposures of your Agency.
- **Annual Income** – include ALL income in Dollars, including government funding (whether it is Federal, State or Local).

Introduced in the FY2024-25 campaign, the Annual income table will now display the Agency's previous year's Annual Income. The system will calculate the variance between the two years and if a variance of +/-15% is detected for your Agency, a commentary field will populate where you are required to provide details of changes to the values. Please provide as much detail as possible about the variance to assist our understanding of the key reasons for exposure movements.

- **Herbicide** – Select "Yes" if your Agency has ever used or is currently using Roundup. If "Yes", please provide details of the purpose and extent of use together with any safety precaution or protection when used. If your agency has ceased using Roundup, please provide the date when this ceased.
- **Dangerous Chemicals** – This is a new section in the Liability Declaration and is looking to understand what, if any Chemicals or Solvents are in use by your Agency. These chemicals may pose both health and physical hazards that can affect third parties.

Chemicals or solvents can include Explosives, Flammable Gases, Liquids, Solids, Oxidising, Toxic/Infectious, Radioactive, Corrosives, or other (asbestos, genetically modified organisms, micro-organisms).

Select "Yes" if your Agency is currently using Dangerous Chemicals. If "Yes", a drop-down selection will appear, please select the Dangerous Goods class for all products that apply:

- | | |
|--------------------------------|---|
| – Class 1 - Explosives | – Class 7 – Radioactive |
| – Class 2 - Flammable Gases | – Class 8 – Corrosives |
| – Class 3 - Flammable Liquids | – Class 9 – Miscellaneous – Glyphosate and other items which are dangerous, but not listed (Asbestos, Genetically Modified Organisms, micro-organisms) etc. |
| – Class 4 – Flammable Solids | |
| – Class 5 – Oxidising | |
| – Class 6 – Toxic / Infectious | |

We will also require details of:

- a) safety precaution protection currently in place
- b) storage of these Dangerous Chemicals

- c) the purpose and extent of use.
- **Professional** – Select Yes if any professional advice or services are offered to third parties by your Agency. Please include professional advice or services provided by any agents, contractors or sub-contractors on behalf of your Agency.
- **Professional Annual Fee Income** – include ALL fees earned from providing professional services or advice in Dollars for each profession listed. Please include the percentage of these fees that are paid to contractors/subcontractors. For example, if the total professional fees received is \$1,000,000 and \$500,000 is paid to the contractor/sub-contractor, please enter 50%.
- **Hold-harmless agreements or waiver of rights of recovery** – We need to know if your Agency has any contractual arrangements in which you agree to indemnify or waive your rights of recovery against any of the agent, contractor, or sub-contractor. For example, your Agency contracts with an engineer for design services, however the engineer requires your Agency to waive rights to seek recovery or compensation where their design work has caused a Third-Party injury or Property damage.
- **Construction** – Provide details of any construction or capital works projects with a value of over \$100million. If you have an extensive list and have it available on Excel, you have the option of emailing this through to declarations@icare.nsw.gov.au.

Products Liability Section

- Provide as much detail of items or products your Agency manufactures, grows, sell, supply or distribute to non-TMF Agency third parties.
- We also require the annual volume and revenue/income earned from selling or distributing these products. Ensure that figures provided are in whole dollars. For example, if income \$300,000, then this should be written as such.
- Products distributed outside Australia and New Zealand – if your Agency distributes or export any products to Third Parties, please provide as much as detail as possible. Each country has different legislative and judicial environments, and some are more litigious than Australia, in particular USA and Canada. This information will assist TMF to better understand the product liability exposures of your Agency.

Public Liability Section

- **Visitors** – Provide the approximate number of visitors your Agency receives to all your premises each year. This should include contractors, tradespersons and clients, but exclude employees. For repeat visitors, please consider each individual visit as one visitor. This is because the slip and trip exposure of having 5 different person visiting your Agency's premises is the same as having the same visitor visiting 5 times.
- **Tenders / Contracts** – Although a similar question is in Agency Activities under Professional Liability, this captures information regarding an agency's use of contractors and whether hold harmless agreements are accepted by the Agency for any type of service or product, not only professional services.
 - You will be required to provide details of the type of contract services provided by the sub-contractors/contractors

Example: building and maintenance services, security services, transport, manufacturing of any goods or products.

- A hold harmless agreement means you are assuming additional liability, beyond those arising out of your agency activities, by indemnifying the contractors for liability arising out of the provision of their services.
- **Procurement/ Contract Management** – You will be required to confirm if any quality controls are in place to manage contract scope, wording and risk mitigation including legal assessment of terms & conditions (especially insurance clause) of the contract. You will have the option to describe the contract review process to ensure contracts are fit for purpose to mitigate agency risk and/or have the option to provide icare with a copy of your policy/procedure by emailing this to declarations@icare.nsw.gov.au.
- **Commonwealth Authority or non-NSW Government Authority** – You will need to declare any agreements/arrangements your Agency has entered with Commonwealth Authority (Federal Agency) or non-NSW Government Authority where a strict liability is created, whereby your Agency is liable regardless of fault. This normally arises from the operation of a legislation; Commonwealth legislation defines the liability between Federal and State agencies for the provision of a service.
Example: Under the *Water Act 2007* (Cth), Commonwealth and State agencies agreed to indemnify in equal shares for any liability arising from the Federal agency, Murray Darling Basin Authority, managing the flow of water in that river system.
- **Tenders / Contracts of \$20 million** – If your Agency has contracts that attaches liability of \$20m or greater, where you have assumed liability, you will need to declare to provide details of these contracts either Onscreen or in the Excel Template.
Assuming Liability – this with when your Agency has assumed liability beyond common law or a cap is imposed limiting icare rights to recovery against a contractor.
Contract Value vs. Indemnity vs. Price
 - **Contract value** is the legal agreement where parties agreed to financial value of goods, services or construction once is executed.
 - **Indemnity** is a contractual transfer of risk between entities to prevent loss or compensate for loss which may occur as a result of the specified event or service provided as described in the Contract.
 - **Price** refers to agreement for certain amount of work or services provided as described in the Contract.

Incidents Section

- Details about any incidents or possible claims for compensation by third parties. Only tell us about claims that have not previously been notified to the TMF by your Agency. DO provide as much detail as possible.

Environmental Impairment Section

- Provide details of any environmental site monitoring and reporting undertaken by your Agency. (For example: ground water, soil, air quality, wastewater)
- We also require specific details of your Agency's:
 - » current or past storage and/or use of Perfluorinated Compounds/Chemicals (PFC), per- and poly-fluoroalkyl substances (PFAS), Perfluorooctanoic Acid (PFOA) or Perfluorooctane Sulfonate (PFOS)?
 - » above or below ground storage tanks that were installed prior to 2008, which are owned or maintained by your Agency.
 - » Asbestos Management Plan, including asbestos risk monitoring in place for its assets.

Always Save a Copy of Your Work

1. It is recommended that **PDF copies** of all sections and forms **are retained by each Delegate and Coordinator prior to submitting** information for final approval.
2. When using the Download PDF button, Delegates will receive a PDF of the specific section of the form which they have completed.



3. 'Download PDF' will generate the contents of the entire Declaration Form, including all the Sections within it, as a PDF document.
4. If you are attaching any file to your TMF Declaration, please keep a copy. This includes the Excel spreadsheets that have been generated from the Ventiv system.

Please note: the PDF document will only include data that was entered on-screen, noting that if you used on-screen grids to declare assets, vehicles, etc. that the PDF is limited to only printing 100 rows for each grid. If any Excel templates are used, or other documents attached, the user should also save a separate copy as these will not be displayed within the PDF.

If you require further assistance with this, please contact your icare Client Engagement Manager or email declarations@icare.nsw.gov.au.