

## Primer: Infectious Disease Risk Management (Ebola Virus)

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### Onerous Obligation to Ensure Safety

1. Infectious disease risks in Africa pose unique challenges to companies and directors to provide a safe and healthy workplace.
2. The current Ebola virus outbreak has been well publicised. It is significantly more severe than previous outbreaks, both in terms of numbers affected and geographic spread. The evidence suggests that it is not yet under control.
3. Possible contraction by staff is a reasonably foreseeable risk for many, although particular circumstances will significantly affect the likelihood of that occurring. Even where the risk may be remote for a particular operation, the consequences are almost always catastrophic.
4. Mining companies must have in place appropriate preventative and risk management measures; tailored to address the particular risks posed by the work environment and disease(s) of concern.
5. OS&H laws governing Australian employees working overseas impose onerous obligations to "ensure" their health and safety, which relevantly includes such things as:
  - (a) provision and maintenance of a work environment without risks to health and safety and safe systems of work;
  - (b) provision of any information, training, instruction or supervision necessary to protect all persons from risks to their health and safety connected with their work; and
  - (c) appropriate monitoring of worker health and work conditions to prevent illness or injury.
6. Substantial penalties apply for companies and directors that fail to take appropriate precautions. Where that involves a risk of death, as with Ebola, maximum penalties are up to \$600,000 for individuals and \$3,000,000 for companies, with up to 5 years imprisonment in more extreme cases.

### Prudent Mitigation Steps

7. An analysis of recent scientific updates indicates that although Ebola virus is not highly transmissible (compared with malaria or the flu) and requires close contact with contaminated bodily fluids (ie not airborne), the risk may not always be readily apparent and for employees is real.
  - (a) Ebola virus remains viable on inanimate objects. Transmission is by human-to-human contact with body secretions or indirect contact with environments contaminated with such fluids.
  - (b) The number of people who can be infected by one person is high. People present with initial symptoms that closely resemble many (and more benign) infectious diseases, including common flu. It is only in late stages that unique clinical markers appear that clearly identify an Ebola case (eg bleeding from eyes, ears etc).
  - (c) These factors are exacerbated by the fact that in some African countries there is comparatively little effective infrastructure or good infection control practices.

8. In the absence of viable vaccination or treatment options, clearly the only option is prevention. It is critical that companies carefully consider and closely monitor risk profiles regarding employee, contractor and customer movements within and between regions at risk.
9. Although there will be similarities, most companies are likely to require tailored solutions to meet their obligation to do everything reasonable to ensure a safe workplace. This should include consideration of at least the following:
  - (a) Urgent establishment of strict protocols for such things as movement within and between regions at risk, interaction with others in the course of business (& in the community), and sophisticated/stringent health surveillance and monitoring programs;
  - (b) Urgent dedicated training of all staff (including directors) of relevant disease and transmission risks and mitigation strategies, including to avoid unnecessary concern or disruption to the business; and
  - (c) Employment (and/or detailed briefing) of company medical officers (or consultants) with appropriate infectious disease expertise, to monitor developments and help address risks.
10. It is critical (for Ebola and other infectious diseases endemic to the region) to demonstrably continue to exercise due diligence to:
  - (a) acquire and keep up-to-date knowledge of the emerging science on relevant diseases and transmission risks;
  - (b) understand the nature of risks generated by the business operations and employee movements or activities;
  - (c) ensure ongoing training of employees (and others) on state of art preventative measures and disease risks; and
  - (d) ensure appropriate processes are in place to receive and assess information regarding incidents, hazards and risks and to respond urgently where necessary.

## Insurance

11. Insurance arrangements should be reviewed, with independent legal input unless clear cut, but of course must not be relied upon in place of the appropriate measure outlined above.
  - (a) Existing employee insurance should cover outbreak events.
  - (b) D&O policies in Australia generally exclude liability for claims for sickness, disease or death, but cover costs of defending OS&H claims, investigations and statutory liabilities. Important potential exclusions must be considered and limits on the scope of coverage.

## Conclusion

12. Appropriate measures to address infectious disease risks are critical to the success of companies operating in at risk areas. Solutions and processes are likely to require adjustment to meet the particular circumstances. Companies should obtain independent legal advice so that they understand what is appropriate for their operations.

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