



7 December 2021

Dear Roch Cheroux,

We write to you with the genuine understanding that these are very challenging times. We recognise that employers are under tremendous pressure from governments to comply with mandates intended to implement controls mitigating the risks associated with COVID-19. The purpose of this letter is to provide employers with information we believe will assist in developing Covid Control Management Strategies, for managing this risk as vaccination rates increase, and borders inevitably re-open.

RISK MANAGEMENT FOR COVID-19 IN THE WORKPLACE

The risk management strategy for COVID-19 to date has been a many-layered collection of risk-mitigating controls implemented to minimise the negative impact of the virus, through reduction in both exposure opportunities and the severity of the consequences.

The measures used by the government and industry to date have been a myriad of lockdowns, quarantining, social and commercial restrictions, physical distancing, hygiene management, and PPE; and have been overwhelmingly successful in mitigating the risk in the community and workplace, without the mandating of vaccinations.

MANAGING CURRENT LEVELS OF RISK

This latest vaccination control is not new within the mining and resources sectors, as influenza vaccinations have been *offered* free for many years in many domestic sites within Australia to site personnel each flu season. The influenza vaccine is not mandatory, and the risks associated with influenza are not regarded as extreme or potentially catastrophic. However, because of government public health orders, the COVID-19 vaccine is a medical intervention that is being imposed on employees and employers.

This gives rise to questions: -

1. if vaccination reduces only the symptoms, not the risk of infection or transmission, as stated by both the government and the vaccine manufacturers, what is the current level of risk, or is there even a risk to manage at all?
2. the employer is liable should their employees have adverse reactions to the vaccine, so is the control for managing this risk proportionate to the current level of risk being controlled?

MANDATES CONTRADICTED IN LAW

In contradiction of the public health orders mandating COVID-19 vaccination, an employer cannot force their employees participate in a medical procedure.

Mandating vaccination has no basis in law, so this exposes owners or directors to risk of liability and being pursued directly by the employee for negligence and other tortious actions, in the event of any injuries or damage resulting from being vaccinated to comply with employers enforcing mandates.

Employers have an obligation to ensure that workplace risk assessments are done and control measures for workplace hazards are implemented to ensure workplace safety. The **upper limit of any measure allowed** under the respective OHS and WHS frameworks to hazards, including biohazards, are physical engineering controls such as PPE. While COVID-19 does pose a potential risk to workers, there are also known risks associated with the COVID-19 vaccines, and every injury is one too many if we're serious about Zero Harm.

VACCINE EFFICACY

Vaccine manufacturers promote efficacy of up to 95%, however this is based on relative risk reduction, where [absolute risk reduction is between 0.84% and 1.3%](#). As such, the Australian Therapeutic Goods Administration (TGA), admits that the vaccines will not prevent transmission.

Government directives are allegedly based on the best possible health advice from the World Health Organisation (WHO), which in turn receives information from the Centers for Disease Control and Prevention (CDC). On 25 June 2021, WHO Assistant Director-General for access to medicines, vaccines and pharmaceuticals, Marianegla Simao stated that “**vaccine alone won’t stop the community transmission**” and “**people cannot feel safe just because they had the two doses.**” See 00:54:36 and 00:56:26 in the transcript [here](#).

On 30 July 2021, CDC Director Rochelle P. Walensky stated “Today, some of those [data were published in CDC’s Morbidity and Mortality Weekly Report \(MMWR\)](#), demonstrating that Delta infection resulted in **similarly high SARS-CoV-2 viral loads in vaccinated and unvaccinated people**. High viral loads suggest an increased risk of transmission and raised concern that, unlike with other variants, **vaccinated people infected with Delta can transmit the virus.**”

On November 20, 2021, The Lancet, one of the world's oldest and best-known general medical journals, [published an urgent warning](#) to high-level government officials around the world to stop falsely claiming that “the unvaccinated threaten the vaccinated for COVID-19.”. It states, “Stigmatizing the Unvaccinated is Not Justified” by science and is “Dangerous”. Ending with an urgent plea, the paper's author called on “high-level officials and scientists to stop the inappropriate stigmatization of unvaccinated people, who include our patients, colleagues, and other fellow citizens, and to put extra effort into bringing society together.”.

This means the risk of spreading COVID-19 in the workforce **will not be mitigated through vaccination**. It is claimed the vaccinations may reduce symptoms and therefore hospitalisations, but clearly this is only a risk to the employee. We can see from this, that the government has departed from the WHO advice, which leads us to conclude the true purpose of the mandate is not to enhance workplace safety, but to increase uptake by any means necessary, because even in its fullest force, **the mandate cannot prevent vaccinated employees from spreading the virus in the workplace.**

DIVERSITY IN THE WORKPLACE

Our industry has made, and continues to make, great strides in recognising and catering for diversity in the workplace. This mandate is a one-size-fits-all sledgehammer that abandons these efforts, as it makes no attempt to account for differences in the workplace, and it has no bearing on workers’ varying degrees of susceptibility to the virus it is wrongly claimed the vaccine addresses.

Your employees are entitled to voice their concerns, and it is important to respect their choices. We need open and respectful dialogue if we are to have any success at resolution.

The mandate fails to address or respond to the reality that the ongoing threat of COVID-19 is more dangerous to some than it is to others. A sounder approach - that is based in common sense and respectful of a workers’ right to choose - would be to ensure time and resources are better spent issuing industry-specific guidance that adds real substance and permits flexibility. Industry has been exceedingly good at mitigating the risk to date.

In short, these vaccines do not provide sterilising immunity, and for all the reasons listed above, the mandate fails a cost-benefit analysis. By enforcing mandatory vaccination in the workplace, you are being coerced to introduce the management of an immaterial risk, which comes at a high cost, where there may be no gain.

VACCINE RISKS & YOUR LIABILITY

In spite of the government rhetoric, these vaccines do come with risks, as shown on the [TGA adverse events page](#), and as evidenced by the growing list of known serious side-effects. Together with the narrow list of exemptions being offered, it is highly probable the risks associated with vaccine injury cannot be achieved as successfully as industry has managed covid-19. It is generally acknowledged that adverse events are under-reported around the world. The [TGA reports](#) “**estimates 90-95% of adverse events are not reported to regulators.**”, meaning the likelihood of injury is much greater than the current statistics indicate, further increasing your risk of liability.

As the employer, these adverse reactions expose you to direct liability. Both you and your employees should be protected from these risks. [The Australian Immunisation Handbook](#) states that one of the criteria for consent is that it must "**be given voluntarily in the absence of undue pressure, coercion or manipulation.**". These mandates are unquestionably manipulating workers through threat of loss of employment, placing them under undue pressure through coercive measures, and rendering compliance involuntary.

BUSINESS INTERRUPTION

Replacing staff is costly, and can create significant interruption to the business, with setbacks to project delivery deadlines, including adverse supply-chain issues, which negatively impacts company profits and weaken investments. Replacing stood-down Australian workers with international workers is un-Australian, undermining to already-lowered worker morale, damaging for the company reputation and might deter investor interest. Non-local workers are less likely to meet the same levels of skills and experience as locally trained staff.

CALL TO ACTION

These decisions are upon us now, whether we like it or not. It is important that we approach this with respect and not with an adversarial or combative approach, as this will undermine the capacity of each party to reach balanced decisions.

As employers, it is time to really consider the implications these directions have on your own obligations to employees and contractors because, to reach their own vaccination goal objectives, the government is forcing you to breach your obligations without offering you any protections.

Choosing to stand with the decision of your employee means you would need to ask the Minister or Department of Health to change or reconsider the relevant Public Health Order.

It is your duty to protect your business and your employees, so we urge you to put these questions to the government and ask them to withdraw their mandatory vaccination direction immediately and begin negotiating alternative control measures that are lawful, such as rapid antigen testing for example.

To assist with this, we attach an extensive template letter that employers should use to press these issues with government, instead of enforcing the mandates. It is entirely reasonable and essential to have these questions of law and liability answered.

We welcome and encourage you to discuss this further with us, to furnish you with further information or to assist you in any way.

Yours faithfully,

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