

Managing COVID-19 (Omicron) risks in the workplaces

Toolkit for unions, delegates and HSRs

1. ACTU Statement
2. HSR/Delegate letter to employers to demand RATs
3. Model HSR Provisional Improvement Notice (PIN)
4. Model workplace petition
5. Model workplace COVID-19 (Omicron) risk assessment
6. Fact Sheet – Rapid Antigen Test (RATs) as a work health and safety risk control

Unions to demand new Covid safe plans from all employers, free RATs for community and will take action to ban unsafe work

Statement from today's ACTU Leadership meeting:

Leaders from national unions have today met to discuss the ongoing health and economic crisis caused by the rapid spread of Omicron.

Union leaders reported on the devastating impact the latest Covid wave is having on the health and incomes of working people.

All unions express their solidarity, respect, and deep gratitude to the health care workers of our country who are experiencing the full brunt of this wave of sick people.

The unions representing those workers report that they are exhausted and feel abandoned by governments who have encouraged "let it rip" policies.

The "let it rip" governments have failed to prepare our health system and our community, and they are responsible for Australia suffering the highest per capita infection rates in the world.

Australia is now experiencing our worst days since the start of the pandemic and the highest level of sickness ever seen in the workforce. Essential workers are being expected to put themselves in harm's way to keep the country going and in many cases without the protections they need.

The union movement will do everything we can to keep people safe and act to slow the spread of this latest wave of the Covid pandemic.

Unions condemn the failure of the Morrison Government to respond to our requests to work with us during this crisis; or our demands for the provision of free Rapid Antigen Tests, improved masks, fixing close contact definitions and restoring support for businesses and workers.

The Morrison Government has ignored repeated calls over the last 6 months from unions regarding the urgent need to procure RATs as an essential part of our Covid defence as well as the slow pace of the booster and children's rollout putting working people at increased risk.

We have determined that despite the Prime Minister not acting to keep working people safe, the union movement will.

Accordingly, the meeting today resolved to write to all employers reminding them of their obligation to do all that is reasonable and practical to keep workers safe.

This will require each workplace to undertake a new risk assessment for Omicron in consultation with unions, workers and their health and safety representatives. In addition, where appropriate, sector-specific plans should be developed in consultation with unions.

New measures are now needed to ensure safety at work.

For workplaces where working from home is not an option, the provision of free RATs by employers to all workers will be necessary once supply is resolved, alongside upgraded masks and improved ventilation.

Union members will take whatever steps are necessary in their workplaces to ensure they are as safe as possible.

Where employers do not fulfil their obligations, the union movement determines to do everything within its power to ensure the safety of workers and the community.

This may include ceasing work or banning unsafe practices.

Free RATs are needed for the whole community to limit the spread and keep people safe, not just essential workers.

The failure of the Federal Government to act and to provide free and accessible RATs puts us all in harm's way.

We are calling on the community to join us and demand the Federal Government reverse this decision.

The union movement will work directly with the community to demand all members of the Federal Government be held accountable for the inaction of the Prime Minister.

Media contact: Peter Green 0400 764 200

HSR/Delegate letter of demand for RATs

Implementation of Rapid Antigen Testing programs

As you know employers have a legal duty, as set out in our [Work Health and Safety \(WHS\) Act](#), to ensure the health and safety of workers and others so far as is reasonably practicable. This duty requires employers to identify COVID-19 risks in the workplace and do everything they reasonably can to minimise them.

Your obligation under the WHS Act further requires you to, in consultation with workers and health and safety representatives (HSR), continually identify and assess the hazards and risks posed by COVID-19 and implement and review all practicable controls measure to minimise those risks.

In the current climate, which includes highly transmissible strains of the virus, we believe that consideration of additional measures is warranted.

Rapid Antigen Tests have been used as site access requirements in a number of workplaces as one of the ways to address the risk of COVID-19 transmission. While Rapid Antigen Test (RATs) are not a replacement other measures, they are a key emerging part of the range of reasonable responses to the risks presented by COVID-19.

As such, we call upon you to immediately commence a process of consultation with your workforce to discuss the implementation of Rapid Antigen Testing as one of the measures adopted in the workplace to address the risk of COVID-19.

Our workplace HSRs and delegates wish to meet with you to discuss this further. Please contact us on....

Model HSR PIN, consultation demands

Employers may have multiple contraventions of the [WHS Act](#) that might give rise to a Provisional Improvement Notice (PIN). These include:

1. failure to consult (s46),
2. risk assess and/or
3. implement reasonably practicable controls (s19).

Please update the PIN below to reflect the contraventions. For further information on PINs refer to the [Workers Representation and Participation Guide](#).

Brief description of contravention:

The PCBU has failed to ensure, so far as reasonably practicable, the health and safety of workers and other persons by failing to adequately identify hazards and assess risks to health and safety arising from working in the context of the rapidly evolving COVID-19 pandemic (including the emergence of new and highly transmissible variants such as “Delta” and “Omicron”).

Further, the PCBU has actively or by omission failed to **introduce all reasonably practicable measures to eliminate or minimising the risks posed by COVID-19 in the workplace**, and the adequacy of facilities for the welfare of workers.

The PCBU has failed to consult with workers and their representatives (including HSRs), as required by the Work Health and Safety Act.

(Optional) proposed measures:

The PCBU should consult with workers and their representatives (including HSRs) to:

- Identify hazards and assess risks to health and safety arising from the work in the context of the current status of the COVID-19 pandemic;
- Make decisions about ways to eliminate or minimise those risks;
- Make decisions about the adequacy of current facilities and measures for workplace health and safety.

The PCBU should ensure the health and safety of workers and other persons by implementing measures which reflect the outcome of consultation.

Model workplace petition

We are the workers who (keep this business/organisation operating).

We just want to be safe.

In 2022, the COVID-19 pandemic shows no signs of disappearing and presents more risks to health and safety than ever before. New variants like Delta and Omicron are tearing through our community and workplaces. With the risk of workplace transmission ever-increasing, we need strong measures to keep COVID-19 outside our gates.

As numerous examples have shown, an outbreak at a workplace like ours can have disastrous consequences. Production could be hampered or even halted entirely, but the worst effects will be felt by us, the workers. This could all be prevented if we take the right measures.

We call upon you to consult with us about strengthening this workplace's protection against COVID-19. By sitting down and talking with us, we can come up with the best way to make sure that we can continue to work in a way that is safe and sustainable. These should include the introduction of Rapid Antigen Test (RATs) and improved and fit tested (P2 or N95) masks

Model workplace COVID-19 (Omicron) risk assessment

Employers have a duty under the [model Work Health and Safety \(WHS\) laws](#) to eliminate, or if that is not reasonably practicable, minimise the risks of COVID-19 at work so far as is reasonably practicable. Employers also have a duty to consult workers (including contractors and labour-hire) and their health and safety representatives, regarding COVID-19 risks and how these risks are to be managed.

Omicron is a highly infectious variant of COVID-19 and employers **must**, in consultation with workers and health and safety representatives (HSRs) identify and assess COVID-19 risks in the workplace and apply and regularly review all reasonably practicable mitigation controls.

Employers must identify and assess risks in consultation with workers and HSRs

Specifically this includes undertaking a [risk assessment](#) which involves:

1. **Identify hazards**—find out what could cause harm.
2. **Assess risks, if necessary**—understand the nature of the harm that could be caused by the hazard, how serious the harm could be and the likelihood of it happening. This step may not be necessary if you are dealing with a known risk with known controls.
3. **Control risks** – implement the most effective [control measure](#) that is reasonably practicable in the circumstances and ensure it remains effective over time.
4. **Review hazards** and [control measures](#) to ensure they are working as planned.

When considering controls you **must** implement **all reasonably practicable controls** that are available. This includes, but is not limited to, the following:

- facilitating working from home or remote working,
- encouraging [vaccination and boosters](#), where applicable,
- ensuring your workers do not come to work when unwell through the provision of Paid Pandemic Leave (PPL)
- implementing a rapid antigen testing (RAT) program
- wearing masks including improved masks such as P2 or N95
- improving [ventilation](#), where appropriate,
- ensuring physical distancing in the workplace and adhering to density limits (check occupancy limits for the type of building and building standards). For example:
 - supporting some or all workers to work from home or relocating work tasks to different areas of the workplace or off-site,
 - staggering your workers' start, finish and break times (in consultation with workers and their unions),
 - reducing the number of situations where workers come into close contact, for example in lunchrooms and other shared spaces,
- practising good hygiene,
- increasing cleaning and maintenance,

What is reasonably practicable

Employers must do what is [reasonably practicable](#). That means doing everything they reasonably can when it comes to managing COVID-19 risks. In determining what is reasonably practicable they must take into account all relevant matters including:

- **Likelihood of the hazard or risk occurring** – the greater the likelihood of a risk occurring, the greater the significance of this factor when weighing up all matters and determining what is reasonably practicable
- **Degree of harm that might result** from the hazard or risk – the greater the degree of harm that might result from the hazard, the more significant this factor will be when weighing up all matters to determine what is reasonably practicable. Where the degree of harm that might result from the risk or hazard is high, a *control measure* may be reasonably practicable even if the likelihood of the hazard or risk occurring is low.
- **Knowledge** about the hazard or risk, and ways of minimising or eliminating the risk – this must take into account what the duty holder actually knows and what a reasonable person in the duty holder's position would reasonably be expected to know
- **Availability and suitability of ways to eliminate or minimise the risk** – requires consideration of what is available and suitable for the elimination or minimisation of risk, and
- **In relation to costs, there is a clear presumption in favour of safety ahead of costs.** In addition to this, the cost of a control measure must be grossly disproportionate to the risk for the measure not to be reasonably practicable.

Fact Sheet - Rapid Antigen Tests (RATs) as a WHS risk control

RATs are an effective and 'high order' control and should be considered by all workplaces¹. They are effective at identifying people that have COVID-19 and are infectious. This allows workplaces to support and isolate positive workers away from the workplace and prevent workplace transmission.

Only rapid antigen tests that are approved by the TGA are permitted for use in Australia. A list of TGA-approved rapid antigen 'point of care' testing kits (for use under medical supervision) is available [here](#).

A list of kits approved for self -testing (for use without medical supervision) and instructions on how to use the kits is available [here](#). The TGA has also published a [fact sheet](#) on self-testing.

Implementing RATs in the workplace

The following principles should apply when introducing a RAT program:

- **If RATs are required to be performed at work then it must be paid time** – prior to starting work.
- **Whilst waiting for the test result [up to 20 minutes]**, interactions between people must be minimised eg separate space, maintain social distancing
- **If the RAT result not negative** – the person must not enter the workplace until a negative PCR test result is obtained
- **Paid leave** must be provided to all workers who need to get and wait for PCR test results [at a minimum 24 hours]
- **Paid Pandemic Leave must be available for all workers** to isolate whilst awaiting result and if positive for COVID
- **Everyone – irrespective of work role** – must be tested
- **Any private information must not be shared** with the employer/PCBU
- **The employer/PCBU should receive** only the results of the RAT.

Access to RATs will improve

Given the failure of the Commonwealth Government to source and supply RATs there is a limited access to some self-testing kits. At this time (Jan 2022) testing kits are being prioritised for some essential his may mean for some workplaces will have limited access to testing kits. **There are an estimated 300 million testing kits on order for Australia. When supply and access improves workplace should consider when this control should be implemented.**

Employers must pay for rapid testing programs

¹ RATs are a 'high order' control. This means that they are higher up the hierarchy of controls and should be considered in all workplaces where workers interact with others.

Your capacity to pay for a RAT program is not a relevant consideration under the model WHS Act, however you may consider the cost of the control measure after all other matters on the risks and controls have been considered. Given the risk of COVID-19 to Australian workplaces and workers, cost is unlikely to be determinative of whether you should implement a RAT program in your workplace should the supply issues have been resolved.

You must regularly review the controls that you have implemented to minimise COVID-19 risks. This means as supply and access of RATs improves workplaces must consider their implementation.