# Workers’ Compensation and COVID-19 - 2022

***Question:*** *Given Omicron, we are wondering how the claims processes will change now, if at all, with the use of self-administered RAT tests, less formal processes from Health Departments as to close contacts and tracing and more community spread. Our observation is that the balance of probabilities as to where a person is more likely to have contracted COVID has changed.*

*Any clarification on state and territory claims processes would be appreciated.*

SUMMARY

**WA**

In relation to the information below, we can confirm that for the COVID presumption to apply in the WA workers’ compensation scheme a health care worker must be diagnosed by a medical practitioner based on a PCR test, or a cell culture, or antibody test - by a NATA accredited laboratory. A RAT does not meet the criteria for the COVID-19 presumption.

A worker could of course make a claim without relying on the COVID-19 presumption, perhaps following a self-administered RAT. In these circumstances the normal claims process applies, which includes the worker obtaining a certificate of capacity (including a diagnosis ) from a  medical practitioner. However, it’s unclear how a medical practitioner could make a diagnosis of COVID-19 using a self-administered test that is not done by the medical practitioner or in their presence. We’d be interested in any feedback you receive from other states.

In practice it is unlikely occupational exposure will be proven once there is community spread (other than for health care workers).

**NSW**

COVID continues to present its challenges in many facets. For NSW, I provide the following information.

* While the presumptive legislation is currently under consideration by the NSW Government, it remains in force, meaning workers from listed occupations noted in s19B of the 1987 NSW Workers Compensation Act are considered to have caught Covid-19 as a result of their employment. For all other occupations not listed in s19B, liability for the disease is treated as like any other claim for compensation.
* The Workers Compensation Amendment Bill 2021 (which introduced the presumption) was referred to the [Legislative Council Portfolio Committee No. 1 – Premier and Finance](https://protect-au.mimecast.com/s/8DilCJyBMPH8K1KBhVU7zc?domain=parliament.nsw.gov.au). A hearing is scheduled for 2 February 2022 with a committee report being due by Monday 21 February 2022.
* The Workers Compensation Regulation prescribes that either a PCR test or Nucleic Acid Testing is required as medical evidence to confirm the worker’s compensation claim for Covid-19. The Regulation is silent on Rapid Antigen Testing.
* Current NSW Government advice confirms that if a worker receives a positive test result on a rapid antigen test (RAT) they may be considered a confirmed COVID-19 case for health purposes. Further information is available at~~:~~ [https://www.nsw.gov.au/covid-19/business/rapid-antigen-testing-information-for-businesses](https://protect-au.mimecast.com/s/G0PECL7EOPFPQmQkfP-WJ4?domain=aus01.safelinks.protection.outlook.com)
* SIRA expects insurers to apply a proactive and pragmatic approach to managing COVID-19 workers compensation claims that promotes the intent of the presumptive legislation whilst maintaining the operational balance between properly assessing claims and recognising there has been a shift from PCR tests to RATs.
* Such an approach is supported by [Standard of Practice 32: Managing claims during the COVID 19 pandemic](https://protect-au.mimecast.com/s/vaLxCMwGP9f5zRz2fWJVOF?domain=sira.nsw.gov.au)
* This Standard of Practice sets the expectation that insurers will be flexible and adaptable and ensure that claims are managed with empathy and transparency, making liability decisions, and paying entitlements without delay. The Standard promotes the delivery of a tailored approach that meets the needs of workers, employers, and other system participants.
* SIRA continues to monitor the situation and provide advice to the Government, and will adjust its regulatory settings as necessary.

**VIC**

Individual claims relating to COVID-19 will be considered on an individual merit. Under legislation, a disease such as COVID-19 suffered by a worker would be regarded as being due to the nature of employment, if that employment gave rise to a significantly greater risk of the worker contracting the disease.

As the virus can be contracted through community contact as well as through workplace exposure, there would need to be a clear link between a person's employment and contracting the virus for a claim to be accepted.

Where an employee’s employment puts them at greater risk of contracting the virus the significant contribution test may be easier to meet. For example, if the employment involves:

* travel to an area with a known viral outbreak
* activities that include engagement or interaction with people who have contracted the virus

More information about COVID-19 claims eligibility and process can be found on WorkSafe Victoria’s website [here](https://protect-au.mimecast.com/s/hmz-COMKjZFAvop7uEpK9X?domain=worksafe.vic.gov.au).

In relation to your question regarding the use of self-administered RAT tests, in Victoria the Department of Health is the lead agency for managing how a COVID-19 diagnosis is achieved.

Currently the [Coronavirus Victoria website](https://protect-au.mimecast.com/s/PBL3CP7LkYF43qKjf0MNgD?domain=coronavirus.vic.gov.au) provides that if a person has tested positive using a rapid antigen test, they are officially a case and must report their result to the Department of Health.

**Comcare**

From a Comcare perspective our current claims process arrangements have not changed, the requirements under the SRC Act for claim lodgement still apply.

**NT**

As with WA, the NT is a privately underwritten scheme and COVID claims are processed the same as all other claims by the approved insurers/self-insurers with liability decisions being made within 10 days of the claim being lodged (legislated requirement).

If a worker were to return a positive RAT, they are required under current NT directions to then have a PCR so insurers/self-insurers may wait for that result but I would only be guessing.

The NT has had 2 claims for contracting COVID during the pandemic, so the insurers/self-insurers have not really been challenged with the liability decisions regarding this.

I believe the bigger challenge is going to be whether COVID was contracted ‘out of or in the course of their employment’ now that it is more prevalent in the community in the NT.

**SA**

ReturnToWorkSA’s management of COVID-19 related claims has not changed since the start of the pandemic. Our claims management agents continue to approach COVID-19 related claims with the same process and evidence requirements that apply to any other claim.

For a disease such as COVID-19 to be compensable under the Return to Work Act 2014 (SA), it must be established on the balance of probabilities that the injury arose from employment and that employment was a significant contributing cause of the disease. Each claim is considered on its individual merits having regard to the individual circumstances and evidence in relation to the claim.

Where the worker’s employment puts them at a greater risk of contracting the virus, such as frontline health workers (for example, doctors, Nurses and Paramedics), the compensability criteria is typically easier to meet.

To date, ReturnToWorkSA’s registered scheme has not had a large experience with COVID-19 related claims. Claims have risen at a greater rate more recently following the decision to open the State borders and with Omicron, however, overall the total number of claims remains low. Since the start of the pandemic, 59 COVID-19 related claims have been lodged with 44 of those claims having been lodged since November 2021. To date only 3 of those 59 claims have been rejected.

The majority of COVID-19 related claims have been accepted for short periods of time lost, typically up to 2 weeks, which aligns with quarantine and illness timeframes. So far we have not observed disputes or further periods of incapacity being raised by injured workers. Furthermore, to date there have been no complaints or issues relating to the timely processing of COVID-19 related claims.

The use of self-administered RAT tests is unlikely to change our approach to the management of COVID-19 related claims and instead simply forms an aspect of the assessment of the individual circumstances and evidence of each claim.