

## **RT-PCR Testing**

Some employers, pursuant to directions made by the Chief Health Officers in Victoria and New South Wales are creating compulsory requirements for RT-PCR testing for the purposes of running surveillance in some workplaces, including but not limited to aged care facilities, airports, hospitals and abattoirs.

These compulsory requirements have also been rolled out as part of the directions for returning travellers or cross-border travellers in some instances in hotel and/or quarantine detention and/or home isolation.

In most instances, these directions allow for a refusal to do a RT-PCR test on the condition that you do a further period of detention or isolation of 14 days (it used to be 10 days but now they have increased it to 14 days).

We note the conflicting national advice coming through the national advisory guidelines from the CDNA (Communicable Disease Network Australia) that have been agreed to by all States and Territories, is that you do not require a further 14-day period of isolation if you have been diagnosed with COVID-19 by simply testing positive on a RT-PCR test and have been completely asymptomatic for 14 days. Unfortunately, the States and Territories are applying their own unscientific standards by forcing a further 14 days detention for individuals who are completely asymptomatic in hotel detention.

Please see the latest CDNA guidelines here:

[https://www1.health.gov.au/internet/main/publishing.nsf/Content/7A8654A8CB144F5FCA2584F8001F91E2/\\$File/COVID-19-SoNG-v4.7.pdf](https://www1.health.gov.au/internet/main/publishing.nsf/Content/7A8654A8CB144F5FCA2584F8001F91E2/$File/COVID-19-SoNG-v4.7.pdf)

Unfortunately for many people coming home, they will be forced to take the RT-PCR test before entering into Australia or being allowed to board a plane from overseas <https://covid19.homeaffairs.gov.au/before-i-travel>.

This coercive practice has not been legally mandated via any directions and/or requirements under the Biosecurity Act 2015. This requirement in itself can be challenged separately if Advocate Me can locate an appropriate lead applicant on the issue.

We have found that where RT-PCR tests are being rolled out as part of a surveillance program, some employees are being threatened with termination of employment or suspension of employment where they refuse to do a RT-PCR test.

The RT-PCR test is quite an intrusive test with naso-pharyngeal swabbing. However, there has recently been a move to use saliva testing. This was initially used as part of a screening process and the general utility of these tests are questionable. However, the test itself is not intrusive and it may be an alternative for people who need to retain their jobs and livelihoods.

It is to be noted however that the saliva test has not been endorsed by the Therapeutic Goods Administrators (“TGA”). Those tests are strictly experimental and require specific forms for informed consent. This adds another layer of complexity in using these saliva tests for the purpose of surveillance.

We say that this forcing of people to take a RT-PCR test in asymptomatic populations goes against the national standards and advice provided by the [Public Health Laboratory Network](#), an advisory committee set up by the [AHPPC](#), the Australian Health Protection Principal Committee.

The AHPPC is promulgated by all the Chief Health Officers in each state and territory. Therefore, it represents the united views of all the leading medical practitioners in each state and territory. Any state or territory directives issued by the Chief Health Officers that contradict the advice they give nationally, can be used against them.

There are a series of guidelines and publications produced by the PHLN linked here:

<https://www1.health.gov.au/internet/main/publishing.nsf/content/Publications-13>

Quite importantly, the following publication clearly sets out that asymptomatic testing on the population is neither recommended or advised. Yet most RT-PCR testing is pushed on asymptomatic populations:

<https://www.health.gov.au/sites/default/files/documents/2020/08/phln-statement-on-asymptomatic-testing-for-sars-cov-2.pdf>

In our experience some hospitals and medical clinics are denying people entry, medical assessments, treatment, surgery or other emergency and medical services. You can also tailor the following letter to these service providers, as the PHLN also strongly and emphatically does NOT recommend asymptomatic testing for elective surgery patients.

***If you find yourself confronted by an employer who is persisting that you do an RT-PCR test when you have no symptoms, then we suggest you challenge them as follows:***

## Letter T1

### **RT-PCR TESTING as part of mandatory surveillance testing by employers and service providers such as hospitals, schools and the like**

Dear.....,

I refer to your email and whilst I recognise that there are State Government directions with regard to asymptomatic testing, I would like to bring to your attention that the State Directives are in complete contradiction to the National Recommendations made by the Public Health Laboratory Network, that asymptomatic surveillance testing leads to false positive outcomes. These are the experts in the field and as we are also subject to a national emergency, the national requirements take precedence.

I therefore choose not to get tested knowing the serious risks with false positive outcomes. The RT-PCR testing should not be used negligently for this purpose as it will not serve to provide correct data.

I also have the right to deny any other testing, not been approved by the TGA. The saliva testing is still experimental and you would require my informed consent to participate in experimental testing. The same issues would also apply in relation to me having no symptoms.

I am happy to have a medical examination with regard to verifying that I have no symptoms. However, I will not participate in a test that is likely to produce false positives according to Government experts.

I enclose for your reference the PHLN statement on their advice against [asymptomatic testing](#). This is inconsistent with the directives from the Victorian Government and inconsistent with the fact that the Chief Health Officers in each state and territory are part of the National Committees.

I also cite directly from the PHLN Statement:

“PHLN raises concerns that Victoria’s introduction of mandatory of pre-operative testing for elective surgery patients will significantly impact on both laboratory capacity and patient flow through the hospital system. PHLN recommends a strong National stance against this testing strategy and similar asymptomatic screening for SARS-CoV-2.”

It is evident that the PHLN does not support asymptomatic testing for pre-elective surgery or other surveillance type situations for asymptomatic individuals.

You do not have the right to impose on me any consequences that are negative, given that I have provided you an alternative to examine my symptoms, and secondly, that I have produced Government advice that goes against the practice of asymptomatic surveillance testing.

## Letter T2

### **RT-PCR TESTING as part of a school request after a child has been absent due to influenza like-symptoms, or by an employer after the employee has been absent due to influenza-like symptoms**

In general, RT-PCR testing is completely voluntary and not mandatory. Currently, if you are diagnosed with COVID-19 or are deemed as a “close contact” to someone who has been diagnosed with COVID-19, governments across the states and territories generally have issued directions to deal with the circumstances that require you to self-isolate or self-quarantine.

As an example, in Victoria, the following directions cover those requirements:

[Diagnosed Persons and Close Contacts Directions \(No 15\)](#)

Importantly, as part of those requirements the only entity that can make an assessment as to your diagnosis or close contact status is a qualified individual from the Department of Health in your state and territory.

Employers and schools do not have the legal right to make such determinations or diagnosis. Therefore, they cannot compel you to quarantine, or request that you have a test to clear yourself of a medical status they suspect you of having.

***In these circumstances, you can write the following to your employer or school on behalf of yourself or your child:***

Dear .....,

I refer to your request to get an RT-PCR test in relation to my recent absence (or my child’s recent absence), and/or in relation to my recent presentation of influenza-like symptoms.

I have a medical certificate to say that I no longer present with any symptoms and that these symptoms have not been attributed to a diagnosis of COVID-19 and/or an assessment that I am a close contact with someone who has been diagnosed with COVID-19.

As an employer or educational facility, you do not have the legal right to direct me to do an RT-PCR test, in the absence of a government direction or determination that I am a diagnosed person and/or a close contact, pursuant to the applicable directions by the Chief Health Officer.

You have the right to request a medical clearance in relation to my symptoms and my fitness for work or attendance at school. As I have supplied you a medical certificate that I am fit for work and that I no longer present with flu-like symptoms, you are required to return me to my employment and/or schooling without an RT-PCR test immediately.

If you suspect that I have COVID-19, you will need to notify the Department of Health. I note here, however, that this must not be made in a wilful and deliberate manner to cause me any prejudice.

I also note that you are neither an Authorised Officer under the law, or a medical practitioner, authorised to carry out diagnosis and/or close contact determination.

## Letter T3

### RT-PCR TESTING as part of a demand in Victoria

***This is also an alternative letter if you are demanded to be mandatorily tested by “anyone” without the authorisation of the Chief Health Officer.***

***Soon we will provide the relevant references for the other states and territories.***

Dear.....,

I refer to your request to me that I am required to be mandatorily tested. Please provide me clearly the legislative direction from an Authorised Officer under the Public Health and Wellbeing Act 2008 that compels me to be tested and the reasons for me being tested.

An authorised person would receive authorisation from the Secretary of the Department of Health and Human Services and then subsequently authorisation from the Chief Health Officer. Furthermore, in relation to testing specifically, there would be orders made for me to be tested by a medical practitioner.

I draw your attention to the actual Government advice on the issue of testing. COVID-19 Case and Contact Management guidelines for health services and general practitioners, 14 October 2020, Version 24, at page 9, states;

*“Who should be tested for COVID-19?”*

- People without symptoms should not be tested except in special circumstances as directed by the Department such as part of an outbreak investigation/response (active case finding)
- All close contacts and returned international travelers prior to the end of quarantine as directed by the Department. Returned international travellers are also tested early in their quarantine period
- Prior to surgery as directed by the Department
- As part of Department-led enhanced surveillance (to investigate how widespread COVID-19 is in certain groups in the community)

Only confirmed and probable cases need to be notified to the Department. Notify the Department as soon as practicable by calling 1300 651 160, 24 hours a day.

Workplaces are acting beyond their authorisation, if they are setting workplace policies that go beyond these guidelines. I do not have any symptoms and I do not present with any signs of fever, cold, coughing or sneezing. I have the right to refuse being tested, if you cannot provide me with a direction for me to be specifically tested from the Department, from an authorised person.

Furthermore, even if you can show me that the Department has requested you to conduct an enhanced surveillance and/or be tested prior to my surgery, I still have the right to refuse the testing in the absence of being personally directed to do so within the terms of Section 113 of the Public Health and Wellbeing Act 2008 (Vic) by a qualified medical practitioner, because I have been diagnosed or shown to be a risk.

I also note the extensive issues with the RT-PCR test reporting false positives when someone who does not have symptoms is tested. Therefore the test itself does not guard against risk. What guards against risk is an assessment of whether or not I have symptoms. I am happy for someone with medical experience to give me a call to make such an assessment of me.

Furthermore, the [CDNA Guidelines](#) say that if a person is suspected of having Covid, they can quarantine at home. If the symptoms are gone after 10 days, a test is not necessary as the infection period has passed and it has been resolved. If after that period, the symptoms remain, a test may become necessary.