



Actuaries
Institute.

12 March 2025

Insurance Unit
Financial System Division
The Treasury

Email: genetictestinglifeinsurance@treasury.gov.au

Dear Sir/Madam,

Consultation: Ban on the use of adverse genetic testing results in life insurance

The Actuaries Institute ('the Institute') welcomes the opportunity to make a submission to this consultation. We support the Government's decision to ban adverse genetic test results in life insurance underwriting.

The Institute is the peak professional body for actuaries in Australia. Our members work in a wide range of fields including insurance, superannuation and retirement incomes, enterprise risk management, data analytics, climate change impacts and government services. The Institute has a longstanding commitment to contribute to public policy discussions where our members have relevant expertise. The comments made in this submission are guided by the Institute's 'Public Policy Principles' that any policy measures or changes should promote public wellbeing, consider potential impacts on equity, be evidence-based and support effectively regulated systems.

As indicated in September 2024, the Institute supports the Government's announcement that it will ban adverse genetic test results in life insurance underwriting. This will give the Australian community certainty and assurance on the way forward and support medical advances that can benefit society in many potentially profound ways.

Currently, as genetics research is a rapidly advancing field, the implications to healthcare and insurance are still emerging. Advancement in this technology could have wide ranging and profound ramifications. As such, any policy would require the ability to adapt to the advances in genetics so that life insurance balances accessibility of insurance and equity to the insured population as a whole.

We observe that sustainability is a key theme more broadly in the life insurance market, as evidenced by APRA's intervention into individual disability income insurance (IDI). and can threaten the viability of important offerings to the community.

In **Attachment A**, we set out our responses to the questions in the consultation paper. In summary, the Institute recommends:

- **The ban applies to underwriting only:** The underwriting stage of a life insurance policy is when the insurance company gathers information, evaluates the applicant's risk, and determines the terms of coverage for the policy. By applying the ban at this stage, it ensures that genetic testing or participation in medical research involving genetic testing (which may or may not result in adverse test results) will not affect an individual's life insurance premiums or their ability to obtain life insurance coverage. This is important because retail life insurance policies are guaranteed renewable; once an application is approved during underwriting, the applicant is guaranteed the

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option to renew their policy if they wish to maintain coverage. The ban would also apply in the situation where a policyholder requests to vary their cover and where then the health of the life insured is underwritten again.

- **Consumers to have the option to submit their full genetic testing results and the insurer would only consider these results if they would positively impact the underwriting decision:** This ensures that the insurer has the responsibility to interpret how genetic test results affect the life insurance offer, while guaranteeing that these results will not be used to disadvantage the applicant compared to a scenario where genetic test results are not shared. If the consumer elects to submit their genetic tests to the insurer then it is crucial that consumers fully disclose all genetic test results to the insurer, rather than selectively disclosing only favourable aspects. This requirement would be consistent with both consumers and insurers meeting the utmost good faith requirement.
- **The government to consider an appropriate review process:** The government should establish an appropriate review process to assess the effectiveness of the legislation. Given that this is an emerging field, the full implications of the ban may not yet be fully understood. Data collection and analysis are critical for the government to monitor the policy's sustainability and adjust the approach as necessary. We recommend that as part of the review process, the government, in partnership with genetic and life insurance peak bodies, regularly monitor population-level genetic testing data sourced from genetic testing providers. This would help track key trends and share findings with the life insurance industry. Monitoring should occur frequently enough to ensure the sustainability of life insurance offering and inform the future direction of the legislation. The Institute would support a review every 5 years, or earlier at Treasury's discretion based on medical advancements.

We welcome further consultation with Government and other stakeholders as to the data collection measures that should be considered.

The Institute would be pleased to discuss this submission. If you would like to do so, please contact me on (02) 9239 6100 or executive@actuaries.asn.au.

Yours sincerely

(Signed) Elayne Grace

CEO

Attachment A

Responses to Consultation Questions

Question 1 - The Treasury invites comments on the proposed design option for the ban, and whether any modification(s) to the above option should be considered. This includes comments as to the feasibility of the option; whether it is likely to achieve the Government's policy aims; and whether there are any practical, legal, or administrative considerations.

The Institute supports the Government's objective in that a legislative ban would reduce, to the greatest extent possible, the number of Australians delaying or foregoing genetic testing and/or participating in clinical research involving genetic testing due to concerns about the possible impact on their life insurance. To achieve this outcome, the Institute recommends the following:

[The ban should be limited to the underwriting stage only.](#)

Given the long-term nature of life insurance, genetic testing results only impact an individual's life insurance cover at the underwriting stage (where eligibility is assessed and insurance terms are offered). Once the cover is underwritten, it is guaranteed by the life insurer, to which the application was originally made, to be renewable annually on the same (or, at the insurer's discretion, more favourable) terms of coverage for the life of the policy. As such setting the ban at the underwriting stage provides certainty that undertaking genetic testing or participating in medical research involving genetic testing (which may, or may not, result in adverse test results), will not impact an individual's life insurance premiums or ability to obtain life insurance cover or their claim.

Once the terms of coverage are set and the life insurance cover is obtained, insurers should be allowed, and indeed encouraged, to help their policyholders use their genetic information to improve health outcomes. Areas where genetic testing can improve the health of individuals include:

- Pharmacogenetics, which uses a patient's genetic makeup in combination with other clinical information to create a personalised medication regimen with greater efficacy and safety for the individual patient (e.g. Hepatitis B HBV DNA tests can inform treatment options; GeneSight Psychotropic tests can inform the prescription of antidepressant or antipsychotic medication). To improve the health outcomes of customers, pharmacogenetics could be supported by insurers to enable customers and their health professional to work together to determine the most effective medication regimen.
- Epigenetics, which is used to help determine which type of cancer a person has or can help to find hard to detect cancers earlier. To improve the health outcomes of customers, insurers and customers should be encouraged to consider the use epigenetics to aid customers in earlier or more accurate cancer detection.
- Stratification of medical screening, whereby individuals with genetics that indicate higher disease risk start medical screening at an earlier age and vice versa to best utilise medical resources. Insurers should be permitted to encourage customers to undertake appropriate medical screening depending on their genetic make-up where this is in the best interests of the customer.

The link between good health and the cost of life insurance has led to many insurers in Australia and globally to adopt measures that reward policyholders for leading healthy lives. One of the most well-

known programs, for example, is the Vitality program. These programs may in future include the components whereby Australian life insurers give their policyholders incentives to take genetic tests to help them understand their risks and to enable them to take preventative action. An [example](#) of where this is currently done in practice is via a partnership between a USA-based life insurer, MassMutual, and Genomics. MassMutual gives its policyholders access to targeted genetic tests from Genomics that provide a personalised report and options on how to improve outcomes where a higher-than-normal risk rating is suggested.

These examples show how life insurers could help their policyholders, once underwritten, to access the transformative health benefits from genetic science developments and highlight where the interests of individuals and insurers are aligned.

For the avoidance of doubt, we support a ban on the use of both predictive and diagnostic genetic tests during underwriting. However, as the field of genetics continues to develop, we note this position could change in the future. To preserve a key principle of insurability for future risk, insurance applicants must always be required to disclose any conditions they have already been diagnosed with, irrespective of how this diagnosis is known. We also agree with the proposal to retain the ability to assess the family history risk of an applicant as part of underwriting.

[Consumers should have the option to submit their full genetic testing results and the insurer would only consider these results if they would positively impact the underwriting decision.](#)

Individuals should retain the option they currently have to submit their genetic tests to insurers if it could result in a more favourable underwriting assessment. This approach would ensure that the insurer, rather than the individual, would have the responsibility to interpret how genetic test results affect life insurance coverage. Once and if genetic testing results are shared, the insurer would be required to consider these results only if they would positively impact the underwriting decision. As compared to the alternative where no genetic information is shared by the individual, that individual's insurance eligibility would not be negatively impacted by choosing to share all their genetic testing results.

It is crucial, however, that if a consumer chooses to share their genetic test results, they should be required to disclose all such results. Genetic tests can span an individual's entire genome, meaning everyone may have both favourable and unfavourable genetic predispositions to certain diseases. Disclosing the full set of results helps fulfil the utmost good faith obligation on both insureds and insurers and mitigates the risk of moral hazard or "cherry-picking" favourable results that may be contradicted by other unfavourable ones.

We note that the duty of utmost good faith between the insured and the insurer is highly relevant and would continue to apply under this approach.

[The proposed changes to the Disability Discrimination Act 1992 \(DDA\) will drive complexity and may give rise to unintended consequences.](#)

Any consequential changes to the DDA, which apply well beyond insurance, should be approached with care so as to avoid introducing unnecessary complexity and the potential for unintended consequences. We consider the approach to amending the Insurance Contracts Act with any subsequent enforcement and consumer redress via ASIC and AFCA the preferred avenue for ensuring compliance and resolving potential disputes.

Question 2 - The Treasury invites comments on whether there are any specific implications of the ban for the duty to take reasonable care not to make a misrepresentation, the duty of disclosure, and the duty to act in utmost good faith.

As outlined in our response to Question 1, we recommend that the ban is only limited to the underwriting stage. In addition, we recommend that individuals retain the option to submit all their genetic test results to insurers, and that insurers are permitted to use these genetic tests at the underwriting stage only where it would, in aggregate, be favourable to the individual. These recommendations should be implemented so as to not impact the consumer's duty to take reasonable care not to make a misrepresentation in the event (or not) that the consumer chooses to disclose all their genetic testing results. The ban should also be applied to not disturb the insured and the insurers' mutual duty to act in utmost good faith in the interactions between one another.

To the fullest extent possible, the amendments to the Insurance Contracts Act should be principles-based and simple to understand. We suggest that any explanatory clarifying detail around interpreting the law should be added to an explanatory memorandum. This will make these changes, and the disclosure duties expected of consumers much easier to explain. We also strongly support any initiatives to increase public awareness and to explain this change to both consumers of genetic tests and consumers of life insurance.

Question 3 - Treasury welcomes submissions as to how the term 'genetic test' should be defined for the purposes of the ban.

Question 4 - The Treasury invites views on whether aspects of the definition of 'genetic test' for the purposes of the measure may be suitably placed in subordinate legislation.

Question 5 - The Treasury invites views on factors that may require aspects of the definition of 'genetic test' to be flexible and remain fit for purpose.

As outlined in our response to Question 1, there are a number of medical treatments that leverage an aspect of genetics (e.g. for Hepatitis A and B, HIV, cancer and mental health) that insurers should continue to have access to. In addition, risks linked to an individual's genetics but identified in ways other than through genetic testing should still be permitted to be underwritten for. Therefore, care should be taken to properly scope the definition of 'genetic test'. We believe the New Zealand definition is too broad for the purposes of the legislation being proposed here in Australia.

To define 'genetic test' for insurance purposes, we see value in aligning the Australian definition to principles-based definitions used by the largest insurance markets (e.g. the UK) given many Australian life insurers are owned by larger global insurers and are also supported by global reinsurance markets. A principle-based definition is easier to understand and less prone to becoming outdated, particularly in a field where research is advancing rapidly, thereby minimising the risk of obsolescence. We caution against a highly prescriptive definition because of how quickly genetic tests have changed and are likely to change in the future.

We support placing the 'genetic test' definition in subordinate legislation. This will enable more frequent updates to the definition as advancements are made in this fast-moving area. We also recommend the definition is reviewed on a regular basis to ensure it continues to meet the original intent.

Question 6 - The Treasury welcomes submissions as to the above proposed approach to when/how genetic test results can be considered released under consent to a life insurer, and subsequently used in underwriting assessments.

Based on the proposed ban, we recommend that the insurer obtain a clear, positive and written record of consent from the individual each time they use that individual's genetic testing results for the underwriting of life insurance of that individual. This includes when using results previously disclosed.

Question 7 - Treasury welcomes submissions as to other possible approaches to when/how genetic test results can be considered consented to be released to a life insurer, and subsequently used in underwriting assessments.

Once the individual is underwritten, we reiterate the importance for insurers and customers to work together in order to improve the overall health outcomes of customers. This could be achieved, but is not limited to, the use of genetic technology to achieve better health outcomes. This would only be done through customer consent and their willingness to participate in either preventative or recovery health initiatives.

Question 8 - Treasury welcomes comments as to the enforcement options available for the ban in the Insurance Contracts Act and the DDA.

We support the proposal regarding enforcement via the Insurance Contracts Act as set out in the consultation paper.

We have concerns regarding any proposed updates to the DDA (as noted in Question 1) and, by extension, we do not support the DDA enforcement options.

Question 9 - Treasury also welcomes comments as to the interaction between enforcement options under both the DDA and Insurance Contracts Act.

We support the proposal regarding the Insurance Contracts Act set out in the consultation paper.

We have concerns regarding any proposed updates to the DDA (as noted in Question 1) and, by extension, we do not support the DDA enforcement options.

Question 10 - The Treasury welcomes comments on the proposed prospective nature of the ban, and the inclusion of historic (pre-ban) tests from the ban from the date of implementation.

We support the proposal set out in the consultation paper. Specifically, that the ban be prospective in nature and apply to all new applications for life insurance from the date of implementation (factoring in any transition period). Existing life insurance policies should not be impacted, and life insurers should therefore not need to reevaluate and/or reprice existing policies as if they had been applied for under the ban.

Question 11 - The Treasury welcomes comments as to how (if at all) the ban should affect variations of existing contracts.

Any variations to existing contracts should be underwritten according to the legislation applicable at that time of the variation. This is a simpler approach for public communication and education initiatives that consumers would understand.

Question 12 - The Treasury welcomes comments on how the ban could operate in relation to in-progress applications for life insurance.

In-progress applications should be assessed according to the legislation applicable at the time the application is submitted. This will provide clarity to life insurance applicants and avoid rework for life insurers that could result in delays for life insurance consumers. We acknowledge that once legislation is passed, customers may wish to reapply and have their application considered under the new legislative framework (subject to any transition period).

Question 13 - What, if any, transition period should be provided for implementing the ban and why?

A transition period of 6-12 months would ensure insurers have sufficient time to update documentation, policies, systems and processes. This would also enable the requisite time to implement a considered and widely supported data collection approach for ongoing monitoring.