

Use of genetic testing

Consultation commences on use of genetic testing in life insurance underwriting

In recent years, the use of genetic testing results by life insurers for underwriting purposes has been the subject of debate as to how to strike the right balance between individual health benefits and access to life insurance.

Treasury consultation commences

In November 2023, Treasury released a consultation paper titled "*Use of genetic testing results in life insurance underwriting*" (**Consultation Paper**), inviting submissions from stakeholders.

The Consultation Paper acknowledges the significant public health benefits of genetic testing and the role life insurance plays in supporting individuals during challenging times. In 2019, Australia's life insurance industry introduced a partial moratorium on the requirement to disclose genetic test results because of concerns that individuals would not undertake genetic testing out of fear of negatively impacting their ability to obtain affordable life insurance.

With advancements in genomic technologies, these concerns may intensify, necessitating regulatory intervention to safeguard both individual access to life insurance and the advantages of genetic testing. Treasury is seeking feedback on life insurers' use of genetic test results in underwriting, and separately, on genetic testing and research, as well as a range of potential policy responses.

Types and purposes of genetic testing

The Consultation Paper identifies a range of purposes of genetic testing, including diagnostic, predictive and presymptomatic testing. These tests can identify an individual's risk of developing certain conditions, providing critical information for healthcare decisions.

Under the *Insurance Contracts Act 1984 (Cth)* (**ICA**), consumers have a duty to take reasonable care not to make a misrepresentation to an insurer when applying for cover.

In the absence of the current moratorium, a consumer would therefore need to disclose to a prospective life insurer the results of any genetic testing that the consumer was aware of. In turn, the life insurer could rely on that information in making their underwriting decisions about the terms of cover the life insurer is willing to offer and at what price.

Potential regulatory interventions

The Consultation Paper proposes and seeks feedback on the following options for regulatory intervention:

- No Government Intervention – No action would be taken by the Government but use of genetic testing results would continue to be governed by industry self-regulation.
- Legislating a Ban – The Government would legislate a total or partial prohibition on the use of adverse genetic testing results by life insurers.
- Legislating a Limit – The Government would legislate a monetary threshold for the limit of cover, below which insurers could not request or use adverse genetic testing results in their underwriting.

Recommendations

Advances in genomic medicine and decreases in testing costs are contributing to the expanding scope and use of genetic testing, with expectations of continued growth in the coming years.

Stakeholders are encouraged to provide feedback on the Consultation Paper. Submissions close at the end of January 2024. The ultimate goal is to foster a regulatory environment that safeguards individual interests, promotes public health and the long-term sustainability of the life insurance industry.