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The Treasury  
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Dear Treasury,

### **Consultation – Ban on the use of adverse genetic testing results in life insurance**

The Financial Advice Association of Australia<sup>1</sup> (FAAA) welcomes the opportunity to provide feedback to Treasury on the consultation paper on banning the use of adverse genetic testing results in life insurance.

The FAAA supports the broader use of genetic testing for health purposes, where we believe over time it will have a material impact on assisting people in the avoidance and management of serious health issues.

However, it is critical to consider how a ban on the use of adverse genetic testing results in life insurance will impact existing clients with life insurance policies, who will likely suffer further premium increases because of this policy change. This group of people have already been suffering from very large premium increases over recent years, as other factors have driven up the level of claims (i.e. increased mental health claims). Our submission considers the potential impacts for this cohort of consumers.

### **Life insurance background**

Life insurance is a form of pooled insurance, where pricing is set and premiums are raised on the basis of the assessment of risk within the pool and claims experience applicable to that pool. If the level of risk within the pool increases and claims rise as a result, then premiums will naturally rise. Cross-subsidisation is also an important factor. If some of the members of the insurance pool are not paying the level of premiums that are warranted by the risks they present, then other members of the insurance pool will ultimately pay more. This is an issue of equity. This genetic testing ban is

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<sup>1</sup> The Financial Advice Association of Australia (FAAA) is the largest association representing the financial advice profession in Australia, with over 10,000 members. It was formed in 2023 following the merger of the two leading financial planning/advice bodies in Australia – the Financial Planning Association (FPA) and the Association of Financial Advisers (AFA). With this merger, a united professional association that advocates for the interests of financial advisers and their clients across the country was created.

likely to result in certain Australians who are aware they have a higher than average risk after receiving genetic testing results, getting access to life insurance at a lower cost than their risk would warrant, whilst others will ultimately pay more.

The advocates of a complete ban on the use of genetic testing, compare life insurance with health insurance, highlighting that health insurance is community rated. That model is not the norm in insurance. In most forms of insurance, access to cover and the cost of premiums are determined by the level of risk and the insurer's willingness to accept that category of risk.

Life insurers are permitted to take into account many other forms of risk, such as weight, blood pressure, previous illnesses and injuries, lifestyle and habits, when deciding whether to offer insurance and at what price. It is also acceptable to have tests done, such as blood tests, as part of the underwriting process. Checks can also include an assessment of previous mental health problems. Equally, it is accepted that applying for life insurance requires the disclosure of family history, particularly with respect to issues such as heart attacks, strokes and cancer.

The role of family history is critically important, as often it is a family history of some of these conditions that will lead someone to undertake genetic testing. The existence of a family history of a serious condition is very likely to already lead to the insurance cover being denied or premium loadings being applied. Banning genetic testing will not change the fact that disclosing family history will remain an important element of obtaining life insurance.

Our key point is that it seems perverse that the ban on the use of relevant health information only applies to genetic testing, and not any other form of predictive health information. It would appear that this debate has been driven more from the perspective of promoting genetic testing specifically, rather than improving access and the affordability of life insurance.

### **Retaining access to life insurance**

It is important to note that once someone has life insurance in Australia, that it is guaranteed renewable. This means that as long as the policyholder continues to pay the premiums, they can retain the cover, despite any deterioration in their health or later discovery of a risk factor. The life insurer cannot refuse to renew the cover just because the level of risk has increased significantly. For many people who have experienced a deterioration in their health, retaining their existing cover is a high priority. It is also the case, that people who already have cover, can already undertake genetic testing without the fear of losing their existing insurance as a result.

There are also other options for obtaining life insurance that do not involve the need for underwriting and disclosing a persons' health status. Group superannuation schemes, or employer superannuation schemes offer insurance on what is known as an 'automatic acceptance limit' basis, where members can obtain cover up to a certain limit without needing to be underwritten.

This type of cover would still be available to people who have undertaken genetic testing and obtained a negative result. It is also available to those with a family history of medical conditions.

### **The consequences of banning genetic testing**

The banning of the use of adverse genetic testing results in life insurance will likely mean that a number of people will be added to the life insurance pools, who may not otherwise have obtained insurance, as it will lead to people with adverse tests results, utilising this information to their advantage and obtaining substantial amounts of life insurance that they would not otherwise have been able to obtain.

The existing genetic testing moratorium, which prevented the life insurers from requesting genetic testing being done or obtaining results, was based upon a cap of \$500k of death and TPD cover and \$200k of trauma or critical illness cover. This meant that those seeking insurance could still obtain a reasonable level of cover without being penalised for their adverse genetic testing results. Under the proposed policy, people who know they have genes that will likely lead to an exposure to serious health issues, could obtain \$5m or more of life insurance cover at standard premium rates. As the testing gets more advanced, it is likely that the results will be better able to predict the timing of the onset of these health conditions. This could be used to the advantage of the person involved or their family.

We are making the point that this will significantly increase the already high cost of life insurance for others. The extent to which this is likely to occur is difficult to predict, however it is certainly likely to be a factor.

### **An alternative solution**

The FAAA continues to favour a model where the existing moratorium on insurers using genetic testing in life insurance below certain caps was legislated (albeit with indexation of the thresholds). We think this would provide a sensible balance, allowing people with high risk genetic test results to still access life insurance, but not at a level that would unreasonably impact the life insurance pools and increase costs for existing life insurance policyholders.

### **Response to consultation questions**

#### **Appropriately targeting the measure**

**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.**

We have noted above that when a person has a pre-existing health condition, the life insurer is able to request the person to undertake a range of diagnostic tests in order to underwrite them, however they would not be able to request genetic tests. This seems a strange position to take when it involves a known health condition and they are seeking to make a decision on whether to accept the risk or not.

**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.**

These obligations will present certain challenges that will need to be dealt with in the way the law is framed.

**Defining ‘genetic test’**

**3. Treasury welcomes submissions as to how the term ‘genetic test’ should be defined for the purposes of the ban.**

We do not have expertise to contribute to this 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.**

The FAAA does not favour the application of a definition of ‘genetic test’ in subordinate legislation that might enable a significant modification of the application of this ban to occur at the direction of a Minister, without adequate consultation or debate. We favour the definition being retained in the primary law and varied, if necessary, when there is sufficient experience and knowledge to justify any change via the parliamentary process.

**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.**

We do not believe that this should be necessary, however neither do we have the level of expertise on any factors that may be required to answer this question.

**Consent to the release and use of genetic test results**

**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.**

The FAAA supports the option of people making disclosures of genetic testing results that are favourable. We recognise the potential complication of unintended release of genetic test results when it might be provided by a third party under a separate release authorisation. This is a difficult situation, that would put the life insurer in a very challenging position.

It is our view that it is overly problematic to demand that genetic testing that was previously provided to a life insurer should be ignored. The ban should be forward looking and not applied retrospectively. If a person seeks to apply for insurance from that same insurer and they were penalised as a result of the prior adverse genetic testing result, then they have the option to go to an alternative life insurer who would not have any access or visibility to those results.

We are uncertain as to the intent of limiting the use of voluntarily provided results to specific policies that are being applied for. If the results are being provided to the life insurer, then they should be able to utilise that information and store those records.

We recognise that some results may be partially positive and partially negative, and it is not clear how such a situation would be addressed. This might create an ethical issue for the applicant to consider in providing part of the result to the insurer, particularly in the context of their disclosure obligations.

**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.**

As stated above, we think this law should be applied prospectively, not retrospectively.

**Enforcement options**

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

In enforcing the policy intent, what has been proposed seems reasonable.

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

The key point here is that the interaction should apply in a reasonable manner and duplicate penalties across separate laws should be avoided.

## **Existing policies and tests (prospectivity nature and implementation)**

### **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.**

The FAAA agrees that the application of any ban should only apply to new life insurance cases. There should not be any requirement to reevaluate or reprice existing insurance contracts.

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

It should not be possible to seek to vary a contract based upon the application of the ban. The existing cover should be preserved, without being impacted by the ban. Any increase in cover should be based upon the insurer's current underwriting knowledge and they should not be required to disregard information that they already have. Otherwise, this would likely serve to disadvantage other existing policyholders.

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

The ban should apply to new applications that commence beyond a specific transition date. Life insurers who commenced the underwriting process under one set of rules should not be required to change the basis of underwriting in the middle of the process.

### **13. What, if any, transition period should be provided for implementing the ban and why?**

As is normal, when making important changes, a transition period is necessary to modify business processes and to train staff. We would normally argue that this should be 12 months.

## **Conclusion**

We have made this submission on the basis that we believe the interests of existing life insurance policyholders should also be represented. This is a complex issue and needs to be carefully considered on the basis of a genuine understanding and awareness of the implications for all stakeholders. We do not want to put obstacles in the way of people accessing genetic testing, however neither do we want to see this ban work to the disadvantage of existing and future life insurance policyholders who will potentially pay much more for insurance as a result of the ban. There is also the potential for this to reduce the level of insurance cover in the general population, increasing reliance on the social security system.

Please contact me on (02) 9220 4500 or via [sarah.abood@faaa.au](mailto:sarah.abood@faaa.au) if you have any questions.

Yours sincerely,



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