

26 June 2026

Treasury

Email: GeneticTestingLifeInsurance@treasury.gov.au

Submitted via Treasury portal

Dear Treasury,

Treasury Consultation – Ban on use of Adverse Genetic Tests – Draft Regulations

The Financial Advice Association of Australia¹ (FAAA) welcomes the opportunity to provide feedback to Treasury on the Ban on the use of adverse genetic tests in life insurance – draft regulations.

Whilst the genetic testing moratorium has been in place for a number of years, the legislative ban on the use of adverse genetic testing information in underwriting will require significant changes in business processes. This will be a factor for people at all points of the life insurance value chain. We are conscious that there will be implications for our members who provide financial advice on life insurance. We are aware of some likely complex circumstances that may be confronted in regard to situations where genetic testing results could unintentionally become a factor. We have set this out below.

FAAA Feedback

Prescribed Genetic Testing Information

With respect to the protected genetic information regulation, the FAAA supports the list, however feedback from members suggested that this list could be extended to include the following:

- Hereditary haemochromatosis (HFE mutation)
- Factor V Leiden thrombophilia

Further feedback from members was a question as to the utility of listing these protected genetic information items, when Subsection 13A(2) states that this section does not limit the things covered by subsection 33F(1). Whilst we feel that it is beneficial to list these matters, our concern is that this list is not exhaustive and as a result there is a prospect of breaching this legislative if a further item is not appropriately handled.

¹ The Financial Advice Association of Australia (FAAA) is the largest association representing the financial advice profession in Australia, with over 10,000 members. FAAA advocates for the interests of financial advisers and their clients across the country.

Enforcement

Our first point to make with respect to the enforcement matters is that an infringement notice amount that is based upon 50 per cent of the maximum penalty seems excessive.

As we prepare for the commencement of this law, we are conscious of potential complications in compliance with the law where guidance would be beneficial. We raise the following different scenarios where we believe that there is an increased risk of unintentional breaches:

- Applicants are able to provide genetic testing information to life insurers that can be used in the underwriting process in a way that is supportive of the applicant. This might be in the case where the genetic testing report demonstrates that they do not have a particular gene that causes increased risk of illness. We imagine, however that the genetic testing reports could include information that is both supportive and adverse. We understand that the life insurer is only able to utilise the supportive information, however this will create complications as the life insurer will need to take steps to destroy or redact the information that is adverse and ensure that they do not use it.
- In some cases, a life insurance applicant may declare that they have had surgical procedures such as a voluntary hysterectomy or double mastectomy. These procedures might be undertaken due to of the discovery of an elevated health risk as a result of obtaining genetic testing. Inevitably medical advice will have been sought before proceeding with such an operation. The insurer will likely ask questions during the underwriting process as to the reason for such surgical procedures. They will need to be careful in how they do this. Asking such questions could lead to the accusation of soliciting genetic testing information. If done as part of tele-underwriting, and the applicant notifies the genetic testing result as the reason for the procedure, the life insurer will need to be very careful with how they deal with this information.
- Life insurers often request information from doctors as part of the underwriting process. There is an ongoing risk that doctors will inadvertently provide information that includes genetic testing information or references to genetic testing information. This is another area where life insurers will need to have careful procedures in place to avoid retention, reference to or reliance on this information as part of the underwriting process.

We suspect that there will be other challenging situations related to genetic testing and the underwriting process which have not yet been fully identified. It is our view that guidance should be issued to assist with this. We suspect that there might be an assumption that there is a very clear differentiation between genetic testing information and clinically diagnosed information, however there may at times be a risk of the intersection between the two that creates problems.

We are also concerned that these types of issues could create challenges for financial advisers and they would benefit from guidance on how to treat certain situations and avoid contributing to an increased risk of disclosing information to life insurers that would not be compliance with the law for insurers to use.

The implementation of this ban on the solicitation or use of genetic testing information in the underwriting process is new territory and will likely have some complications in the early stages as the broader industry comes to terms with how they need to change processes and procedures to avoid the likelihood of breaching the law.

Conclusion

The FAAA welcomes the opportunity to provide feedback to Treasury on the Ban on the use of adverse genetic tests in life insurance – draft regulations and requests that the Government consider how guidance can be provided to support compliance with this obligation.

If you have any questions about our submission, please do not hesitate to contact me on (02) 9220 4500 or phil.anderson@faaa.au.

Yours sincerely,



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