



FINANCIAL
SERVICES
COUNCIL

Use of Genetic Testing Results in Life Insurance Underwriting

FSC Submission to Treasury consultation

January 2024



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1 About the Financial Services Council

The FSC is a peak body which sets mandatory standards and develops policy for more than 100 member companies in one of Australia’s largest industry sectors, financial services.

Our full members represent Australia’s retail and wholesale funds management businesses, superannuation funds, investment platforms and financial advice licensees. Our supporting members represent the professional services firms such as ICT, consulting, accounting, legal, recruitment, actuarial and research houses.

The financial services industry is responsible for investing more than \$3 trillion on behalf of over 15.6 million Australians. The pool of funds under management is larger than Australia’s GDP and the capitalisation of the Australian Securities Exchange, and is one of the largest pool of managed funds in the world.

The FSC’s mission is to assist our members achieve the following outcomes for Australians:

- to increase their financial security and wellbeing;
- to protect their livelihoods;
- to provide them with a comfortable retirement;
- to champion integrity, ethics and social responsibility in financial services; and
- to advocate for financial literacy and inclusion.

2 Introduction

The FSC thanks Treasury for the opportunity to provide a submission on the Consultation Paper considering options for the future regulation of the use of genetic testing in life insurance underwriting decisions. Our submission will provide additional context on the establishment and review of the current industry-led moratorium, including recent changes to strengthen its application.

The FSC notes the life insurance industry has welcomed legislative intervention into the use of genetic tests and we support this new position. The FSC agrees with the industry that there is a public good benefit to encouraging Australians to undertake genetic testing, and that consumers should have certainty that genetic testing will not adversely impact their capacity to secure life insurance on terms acceptable to consumers.

3 Background on the industry standard

Following recommendations made by the Parliamentary Joint Committee on Corporations and Financial Services, the FSC and the life insurance industry established a moratorium on genetic testing in the form of an industry standard (FSC Standard 11: Moratorium on Genetic Tests in Life Insurance), effective from 1 July 2019.

The standard applied to life insurance companies that were members of the FSC, with oversight from the FSC's Standards, Oversight and Disciplinary Committee.

As outlined in the Consultation Paper, this standard allowed for people to take out life insurance benefits up to prescribed financial limits without having to disclose an adverse genetic test result.

The financial limits set in the Moratorium for the different types of personal and group life insurance a person can have with all life insurance companies in total are as follows:

- \$500,000 of death cover.
- \$500,000 of total permanent disability cover.
- \$200,000 of trauma/critical illness cover.
- \$4,000 a month in total of income protection, salary continuance and/or business expenses cover.

A life insurance company may only ask for, or use, genetic test results as part of the process to decide the terms offered for cover if the total amount of cover exceeds these financial limits. Where the total sum insured is greater than these values, a life insurer may only use the results if the test is relevant to the cover being applied for, in accordance with the *Disability Discrimination Act 1992*.

The moratorium was initially subject to a sunset clause, requiring extension beyond 30 June 2024.

4 Moratorium review and ownership

The FSC conducted a review in 2022 so that any required changes to the Moratorium could be identified and implemented well in advance of the sunset clause coming into effect.

As part of this review, submissions were invited and received from geneticists, consumer groups and the life insurance industry. In addition to nine responses from industry,¹ submissions were provided by:

- Human Genetics Society of Australasia (HGSA)
- A-GLIMMER
- Kristine Barlow-Stewart (Genetics Counsellor)
- Financial Rights Legal Centre

Geneticists and consumer groups asked for higher financial limits, an end to having a sunset clause and Government oversight. As a result of this review, changes were introduced to strengthen the Moratorium, taking into account the issues raised in submissions.

In October 2022, The FSC and life insurance industry announced the Moratorium was to be extended indefinitely and included in the new, enforceable Life Insurance Code of Practice (Life Code) from the point that the new Life Code came into effect on 1 July 2023. The Moratorium remained an FSC standard until this date.

From December 2022, life insurance companies progressively resigned from the FSC in favour of establishing the Council of Australian Life Insurers, a stand-alone industry body for that sector. In the period between their resignation dates and 1 July 2023, resigning life insurers opted not to be covered by the Moratorium, however made generic public disclosures that they would continue to uphold all industry standards. This in effect made any non-compliance with the Moratorium a matter for the Australian Securities and Investment Commission (ASIC) by making it a misleading and deceptive conduct issue.

The Moratorium was integrated into the Life Code from 1 July 2023 as scheduled and responsibility for the Life Code was then transferred from the FSC to the Council of Australian Life Insurers in September 2023.

4.1 Indefinite extension

The FSC and life insurers wanted to ensure that life insurance is not a reason for people to be put off from taking a genetic test for fear of later being declined for life insurance.

This motivated removal of the sunset clause as requested in some submissions, but further action was also taken, giving “immunity” to any genetic test taken while the moratorium is in

¹ AIA, Gen Re, HLRA, MetLife, MLC Life Insurance, Munich Re, Resolution, Swiss Re & TAL.

place. This means that consumers can be confident the moratorium will be maintained indefinitely for these tests, regardless of any future changes.

In addition, the FSC (on behalf of the life insurance industry) also confirmed that stakeholders will be consulted as part of any future review of the moratorium before any change is made.

4.2 Stronger administrative oversight

As a result of its inclusion in the Life Code, the Life Code Compliance Committee (LCCC) now has the power to investigate and take action in relation to alleged breaches from 1 July 2023.

An independent body with its secretariat within the Australian Financial Complaints Authority (AFCA), the LCCC may impose sanctions for significant breaches of the Life Code, including the Moratorium. For example, the LCCC can require a Community Benefit Payment be made to a charity where there are significant breaches of the Life Code. Additionally, the LCCC has the power to conduct own motion inquiries into life insurers' compliance practices.

The FSC has confidence in the LCCC carrying out its review functions under the Life Code, including in upholding the Moratorium. It provides an accessible means for consumers to register complaints on potential Life Code breaches, combined with the ability to conduct investigations and access the data necessary to determine if breaches have occurred. With strengthened sanction powers, there is potential for rectification and enforcement for significant breaches.

4.3 Financial limits

Submissions to the review proposed increasing or removing financial limits on the moratorium, supported by two central arguments: alignment to mortgages and comparisons with cover limits in the UK.

A primary driver for consumers applying for life insurance is to manage the risk associated with obtaining a mortgage. One suggested approach was to align the minimum cover limit with the average mortgage in the most expensive Australian state. At the time of the review in 2022, ABS figures showed the mean new mortgage value in New South Wales to be \$762,238.

However, most first-time homebuyers rely on joint incomes to afford a property in Sydney or Melbourne. The moratorium limits allow people to purchase cover of up to \$1 million for joint borrowers (\$500,000 per person). Further, consumer research by NMG showed that consumers expect to have 70% debt coverage, rather than having enough cover to pay off the entire debt.² This research also found the limits to align closely with the amount of cover the community expected people should have from their life insurance policies.

While cover limits in the UK are higher at £500,000 (equivalent to \$960,000 in 2023), the products on offer are not equivalent to those available in the Australian market. Products in the UK commonly offer a level sum insured over time, or in the case of mortgage protection, a reducing sum aligned to the outstanding balance of a mortgage. Where multiple forms of

² NMG Community Expectations Study 2021

cover are offered in the same policy, one payout cancels all other types of cover in the UK, while standalone cover in Australia allows for multiple payouts.

In addition, although TPD cover is not offered as a standalone product in the UK, it is possible for Australians to have both \$500,000 of death cover and a further \$500,000 of TPD cover – a total of \$1 million in cover compared with \$960,000 in the UK.

When compared to countries viewed by industry as having more comparable product offerings, the current limits are closely aligned with those in Germany at EUR 300,000 (\$488,000) and Switzerland at CHF 400,000 (\$671,000).³

Industry submissions to the review noted a number of additional factors relevant to financial limits, including the potential for premium increases, concerns raised by APRA about industry sustainability, the duty of life insurers to all policyholders, and the potential impact on claims experience. Insurers also noted that the financial limits are well in excess of the median amount of cover people opt to take out. These factors should again be considered in detail when evaluating the balance achieved by current financial limits.

5 Conclusion

The FSC views a positive regulatory approach to the use of genetic test results in life insurance underwriting as one that balances accessibility and affordability of life insurance premiums, provides equitable outcomes and a strong consumer protection regime for all policyholders, and ensures sustainability for funds in meeting their claims liabilities.

We encourage the Government to continue its positive engagement with key stakeholders, including consumer groups and the life insurance industry, in determining the approach that most appropriately and effectively meets these aims.

³ Currencies converted to AUD using the average spot exchange rate for 2023.