

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

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21 – 22 October 2009

Question: sbt 9

Topic: Genetic Testing and Life Insurance

Hansard Page: Written

Senator SIEWERT asked:

1. Are there guidelines in place in relation to genetic testing and life insurance?
2. If there are guidelines, what are they?

Answer:

While there are no specific guidelines in relation to genetic testing and life insurance in the *Corporations Act, 2001* or the *Australian Securities and Investments Commission Act, 2001*, the life insurance industry has adopted an industry policy for the use of genetic testing. In addition, the national privacy legislation governs the use of personal information, which includes genetic test results.

National Privacy Principles

Life insurance companies are subject to the provisions of the *Privacy Act 1988* which includes the 10 National Privacy Principles (NPPs). The NPPs regulate the collection, handling, use, disclosure, transfer and management of 'personal information' which includes medical information, such as genetic test results. Health and genetic information is also included in the definition of 'sensitive information' which has additional protections under the *Privacy Act*, including the need to obtain consent before it is collected. Consumers can complain to the Privacy Commissioner if they have a complaint about a breach of the NPPs.

Corporations Act, 2001

1. PDS requirements

The *Corporations Act* contains requirements about information that must be disclosed in a product disclosure statement (PDS) that is relevant to a decision to purchase the product, including information about significant terms, conditions and obligations attaching to the productⁱ. This may have the effect of requiring that any unusual requirements in relation to genetic testing must be disclosed in the PDS.

2. Licensing requirements

The *Corporations Act* contains requirements for holders of an Australian financial services licence (AFS licence). As AFS licensees, life insurance companies must comply with these requirements which may affect the use of genetic tests, for example:

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- financial services must be provided efficiently, honestly and fairlyⁱⁱ;
- representatives must be adequately trained to provide the financial servicesⁱⁱⁱ, which would include in relation to applicable industry standards;
- licensees must have a compliant internal dispute resolution system^{iv}, and be a member of an approved external dispute resolution scheme, which provides a mechanism for consumers to complain about issues in relation to genetic testing.

In assessing compliance with licence obligations ASIC has stated that it will use compliance with industry standards as a guide to good industry practice^v. A departure from industry practice (eg as set out in the Standard), might result in a licensee not meeting the AFS licence requirements.

Australian Securities and Investments Commission Act, 2001, consumer protection provisions

The following conduct is prohibited under the ASIC Act:

- unconscionable conduct in the supply of financial services^{vi};
- engaging in conduct in relation to financial services that is misleading or deceptive or is likely to mislead or deceive^{vii}; and
- the use of false and misleading representations in connection with the supply of financial services^{viii}.

These sections could operate to restrict the way in which life insurers collect, use and disclose matters in relation to genetic testing if it is done in a manner contrary to the consumer protection provisions of the law.

The Investment and Financial Services Association Limited (IFSA)

The IFSA Standard No 11.00 (the Standard) contains the life insurance industry's Genetic Testing Policy, which took effect from 1 January 2002.

IFSA is a national body representing the funds management, superannuation and life insurance industries. Of the 32 life insurance companies registered with the Australian Prudential Regulation Authority, over 20 are either members of IFSA, or their ultimate parent company is a member of IFSA. A list of IFSA members is available on the IFSA website (www.ifsa.com.au).

The Standard applies to all IFSA members who are (or have a subsidiary that is) a registered life insurance company. IFSA also encourages all life insurance companies registered by APRA which are not IFSA members to follow the Standard. IFSA members are required to comply with applicable IFSA standards, and to certify their compliance with the standards annually^{ix}.

Key elements of the IFSA Genetic Testing Policy are as follows (a full copy of the Standard can be obtained from the IFSA website):

1. Insurers will not initiate any genetic tests on applicants for insurance;

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2. Insurers may request that all existing genetic test results be made available to the insurer for the purposes of classifying the risk;
3. Genetic test results will only be used to assess an application by the individual on whom the test was conducted; it will not be used to assess insurance applications by that individual's relatives;
4. Insurers will take into account the benefits of special medical surveillance, early medical intervention and the likelihood of successful treatment when assessing the overall risk of a particular genetic make-up;
5. Insurers will ensure that strict standards of confidentiality apply to the handling and storage of the results of genetic tests; and
6. Insurers will provide reasons for making modified offers, or rejecting applications.

Australian Human Rights Commission

If a consumer believes that an IFSA member company has breached the provisions of the IFSA Genetic Testing Policy, they can contact IFSA. IFSA will review the matter, and liaise with the member company to ensure that the Policy has been followed. If, after this liaison the consumer is still of the view that they have been subject to discrimination, then they may take that matter up with the Australian Human Rights Commission (formerly the Human Rights and Equal Opportunity Commission).

ⁱ See section 1013D(1)(f), section 1013E

ⁱⁱ Section 912A(1)(a)

ⁱⁱⁱ Section 912A(1)(f)

^{iv} Section 912A(1)(g), Section 912A(2); ASIC Regulatory Guide 165: Licensing: Internal and External Dispute Resolution

^v ASIC Regulatory Guide 104: Licensing: Meeting the General Requirements, para 104.15

^{vi} Section 12CB

^{vii} Section 12DA

^{viii} Section 12DB

^{ix} according to the terms of IFSA Standard No 1, Code of Conduct and Code of Ethics