

# Use of genetic testing results in life insurance underwriting

Consultation Paper

Submission to the Australian Government - Treasury

February 2024

# Contents

- Introduction ..... 1**
- AFCA’s experience with life insurance complaints ..... 2**
- Insurance within superannuation ..... 3
- AFCA and ASIC interaction ..... 3
- AFCA Approaches ..... 4
- Appendix 1 ..... 5**
- Appendix 2 ..... 6**



## Introduction

The Australian Financial Complaints Authority (AFCA) is the independent external dispute resolution (EDR) scheme for the financial services sector. For over 25 years, AFCA and its predecessor schemes have provided a cost-free, fair and independent forum for Australian consumers and small business to have their financial complaints resolved. AFCA also works with financial firm members to improve their processes and understanding of issues driving complaints to raise industry standards of service.

In addition to resolving individual complaints, AFCA has responsibilities<sup>1</sup> to identify, resolve and report on systemic issues and to notify the Australian Securities and Investments Commission (ASIC), and other regulators, of serious contraventions of the law.

Since its establishment on 1 November 2018, AFCA has handled over 400,000 complaints and delivered over \$1.2 billion in compensation and refunds to Australian consumers and small businesses. Its systemic issues work has resulted in 4.8 million people receiving more than \$340 million in compensation. AFCA therefore plays a key role in restoring and maintaining trust in the financial services sector and is committed to delivering fair, efficient and timely dispute resolution services, to meet the needs of the diverse communities we serve.

AFCA welcomes the opportunity to provide a submission<sup>2</sup> in response to Treasury's Consultation Paper - *Use of genetic testing results in life insurance underwriting* (the Consultation Paper). We recognise the importance of addressing the use of genetic testing results by insurers and the need to ensure consumers can access the important, often life-saving health information that genetic testing offers, without concerns about potential adverse impacts on insurance coverage and costs.

We note the Government's view that a total or partial ban on the use of adverse genetic testing results by life insurers would provide increased certainty to consumers and medical professionals who undertake genetic testing, or participate in medical research involving genetic testing, and would not impact the ability of consumers to obtain life insurance.

AFCA believes that regulatory intervention is essential, and we would support a solution that promotes certainty, trust and fairness and ultimately provides positive consumer and community outcomes.

---

<sup>1</sup> Refer to Part C, Reporting Requirements, of ASIC Regulatory Guide 267: Oversight of the Australian Financial Complaints Authority.

<sup>2</sup> This submission has been prepared by the staff of AFCA and does not necessarily represent the views of individual directors of AFCA.

Access to independent and free complaint resolution is a key aspect of promoting these outcomes and in our view must be provided. Consumers should be able to make complaints to AFCA about the use of genetic testing by life insurers under an enhanced regime, as this would be a natural extension of our current jurisdiction.

This approach would ensure there is a single EDR scheme for any life insurance complaint involving the use of genetic testing and would continue to provide consumers with a 'one stop shop' for life insurance complaints.

## AFCA's experience with life insurance complaints

AFCA and its predecessor schemes have a long history of resolving insurance complaints, including complaints relating to life insurance. This includes complaints about policies, practices and claims relating to income protection, total and permanent disability, term life, trauma and funeral plans.

In the 2022/23 financial year, AFCA received 1,898 life insurance complaints. The leading sources of these complaints related to income protection products (524), term life (359) and whole of life policies (217). The top three issues raised in life insurance complaints related to delay in claims handling (240), incorrect premiums (207) and service quality (144).<sup>3</sup>

AFCA operates under Complaint Resolution Scheme Rules (Rules) which set out what complaints we can consider, the procedures we can use to resolve complaints, remedies we can provide and related matters including our reporting obligations. When determining complaints, the AFCA decision maker must do what is fair in all the circumstances, and have regard to:

- legal principles
- applicable industry codes or guidance
- good industry practice
- previous relevant determinations of AFCA or predecessor schemes.

In the case of life insurance complaints, the relevant industry code that AFCA will have regard to is the Life Insurance Code of Practice (LICOP). We note that the partial moratorium is currently effected through Appendix A of LICOP, however we are not aware of having received any complaints relating to the partial moratorium or the preceding Financial Services Council's standard.

AFCA can consider complaints where an insurance claim has been denied on the basis of the insured's alleged non-disclosure of medical information or diagnoses.

---

<sup>3</sup> See Appendix 1 for a detailed summary of life insurance complaints received in the 2022/23 financial year. A significant tranche of life insurance complaints received during this financial year related to complaints against the 'Youpla' group of companies, which offered funeral expense policies which were targeted at Indigenous consumers. We have extracted these complaints from the Product and Issues totals shown above and in Appendix 1.

During underwriting an insurer will usually ask questions about whether a consumer has undergone specific medical tests or investigations. AFCA decisions frequently involve assessing what information consumers should reasonably disclose to insurers and what actions insurers take on the basis of this information, particularly in the event of a subsequent claim<sup>4</sup>.

Generally, the Rules preclude AFCA from dealing with complaints about decisions to refuse to provide insurance cover, with some exceptions (e.g. where the refusal is malicious, indiscriminate or made on the basis of incorrect information)<sup>5</sup>. If a total/partial ban on genetic testing or a financial limit on how genetic testing is used by life insurers is legislated, then AFCA may need to amend its Rules to ensure that it can deal with any relevant complaints about insurer conduct.

Any changes to the Rules would be limited to ensuring AFCA can consider complaints about an allegation that the insurer used genetic testing results in life insurance underwriting assessments, inconsistent with its obligations under any updated legislation.

### **Insurance within superannuation**

The Consultation Paper highlights that default insurance provided through a superannuation fund or employer is not individually underwritten. However, it also notes that voluntary insurance within superannuation will generally be individually underwritten. As can be seen in Appendix 2 of our submission, complaints about insurance are consistently in the top five category of superannuation complaints received by AFCA.

All underwritten life insurance policies, whether issued direct or through superannuation, should therefore be explicitly captured by any regulatory intervention.

### **AFCA and ASIC interaction**

In its role as the financial industry conduct regulator, ASIC is responsible for licensing financial firms, including life insurers, and for overseeing and regulating the effective operation of the dispute resolution system for financial services, which includes regulatory oversight of AFCA. AFCA has a well-established, highly effective engagement model with ASIC, and we consider that a regulatory model that leverages the existing financial services regulatory framework would be efficient for life insurers and would ensure efficient and effective access to dispute resolution for consumers.

---

<sup>4</sup> Example Determination – Case number: 948561, Determination – Case numbers: 859595 and 887767 (two insurers joined to complaint).

<sup>5</sup> Rule C.1.4

## AFCA Approaches

AFCA has published a series of documents called Approaches that outline how we approach certain types of issues that we see commonly in complaints. AFCA has published several Approaches that relate to insurance, including [Non-disclosure and misrepresentation](#). We regularly update our Approaches, and plan to consult in 2024 on a new Approach to the recently introduced duty on insureds to take reasonable care not to make a misrepresentation in section 20B of the *Insurance Contracts Act 1984* (Cth).

We have also consulted on an Approach to Discrimination in Insurance, and plan to finalise and publish it in 2024. In preparing this paper we consulted with the Australian Human Rights Commission (AHRC) as well as other relevant stakeholders, and we plan to incorporate guidelines developed by the AHRC into the Approach. This Approach will explain AFCA's general approach to considering whether an insurer has unlawfully discriminated against a person by:

- refusing to provide insurance due to a disability
- applying an exclusion or loading due to a disability
- refusing a claim, in whole or in part, due to a disability.

AFCA will investigate whether a financial firm's conduct is contrary to discrimination law, where the complainant explicitly raises an allegation of discrimination or it appears to AFCA that unlawful discrimination may have occurred.

We can also investigate a complaint about a decision to refuse to provide insurance cover where:

- the decision was made indiscriminately, maliciously or based on incorrect information; or
- the complainant says they were misinformed about the insurance cover.

If the law is reformed so that consumers are able to make a complaint to AFCA about insurers' updated obligations for the use of genetic testing results in life insurance underwriting, AFCA would consider the benefit of developing a specific Approach on this issue, and if so, would factor that into our Approach priorities. Any Approach document would take into consideration the approved regulatory model (as well as making necessary amendments to existing Approaches).

## Appendix 1

Top 5 life insurance complaints (external to superannuation) received by product in financial year 2022/23<sup>6</sup>

Product	Number of complaints
Income Protection	524
Term Life	359
Whole of life	217
Total and permanent disability	200
Funeral Plans	111

Top five life insurance complaints (external to superannuation) received by issue in financial year 2022/23<sup>7</sup>

Issue	Number of complaints
Delay in claim handling	240
Incorrect premiums	207
Service quality	144
Denial of claim	139
Cancellation of policy	131

<sup>6</sup> Youpla funeral plan complaints have been removed from these totals.

<sup>7</sup> Youpla funeral plan complaints have been removed from these totals.

## Appendix 2

### Top five superannuation complaints received by product

Product	2018-19 <sup>1</sup>	2019-20	2020-21	2021-22	2022-23
Superannuation account	1,680	3,723	2,717	3,009	4,369
Total and permanent disability	674	1,161	978	1,014	985
Income protection	322	925	833	795	949
Death benefit	364	578	453	457	599
Pension	70	58	52	77	97

### Top five superannuation complaints received by issue

Issue	2018-19 <sup>1</sup>	2019-20	2020-21	2021-22	2022-23
Delay in claim handling	463	1,260	856	737	1,738
Service quality	183	648	517	774	767
Account administration error	299	570	487	506	709
Incorrect fees/costs	568	753	419	335	397
Failure to follow instructions/agreement	189	375	227	302	337