



**Australian
Competition &
Consumer
Commission**

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Our Ref: C2005/1672
Contact Officer: Nadia Cooke
Contact Phone: (03) 9290 1478

2 February 2006

Dear

**Re: Investment & Financial Services Association Ltd (IFSA) applications
for revocation and substitution of authorisations - draft determination**

The Australian Competition and Consumer Commission (the ACCC) has issued a draft determination in respect of the applications for revocation and substitution of authorisations lodged by IFSA on 4 October 2005.

IFSA is seeking re-authorisation for clauses 10.1 and 10.3 of its Standard No. 11.00, Genetic Testing Policy (Genetic Testing Policy). The clauses provide for an agreement between IFSA members that they will not require applicants for life insurance to undergo any genetic testing and will not induce applicants to undergo such testing by offering individuals insurance at a lower than standard rate in light of favourable genetic test results.

Summary of ACCC considerations

Having considered the applications and submissions from IFSA and interested parties, the ACCC proposes to grant authorisation for five years.

The ACCC considers that some anti-competitive detriment is likely to result from clauses 10.1 and 10.3 of IFSA's Genetic Testing Policy as life insurers are prevented from giving preferential treatment or preferred rates to consumers with favourable genetic test results. The clauses mean that individuals with a good genetic profile are unable to obtain lower premiums based on their genetic disposition. Overall, this may result in slightly higher premium rates, due to a lack of differentiation, than might otherwise be the case.

However, the ACCC also considers that clauses 10.1 and 10.3 are likely to continue to result in benefit to the public as they prevent insurers from coercing applicants for life insurance to undergo genetic testing. Further, the ACCC is of the view that there is a public benefit in maintaining the status quo with regard to the use of genetic testing in insurance to allow time for the newly established Human Genetics Advisory Committee to consider associated issues and make any recommendations in this regard.



On balance, the ACCC considers that IFSA's arrangements are likely to result in a public benefit that will outweigh any public detriment. Accordingly, the ACCC proposes to grant authorisations A90986 and A90989 to IFSA and its members in respect of clauses 10.1 and 10.3 of the Genetic Testing Policy for five years.

A copy of the draft determination is available on the ACCC's website at www.accc.gov.au.

Interim authorisation

The ACCC granted interim authorisation to clauses 10.1 and 10.3 of IFSA's Genetic Testing Policy on 2 November 2005. Interim authorisation will continue to protect the proposed arrangements from action under the *Trade Practices Act 1974* (TPA) until the date the ACCC's final determination comes into effect or until the ACCC decides to revoke interim authorisation.

Next steps

Once the ACCC issues a draft determination, the applicant or any interested party who may be dissatisfied with the ACCC's draft determination may request that the ACCC convene a 'pre-decision conference'. A pre-decision conference provides the opportunity for interested parties to make oral submissions in relation to the draft determination. Under the TPA, the ACCC must set a date within 14 days of which any pre-decision conference must be requested. Accordingly, if you wish the ACCC to hold a pre-decision conference in relation to this draft determination, you must notify the ACCC in writing by **cob on Thursday 16 February 2006**. Conferences are conducted informally, without the participation of legal or other professional advisers.

Alternatively, you are also invited to make a written submission in response to the ACCC's draft determination. Written submissions should be lodged by **24 February 2006** at the following address:

The General Manager
Adjudication Branch
Australian Competition & Consumer Commission
PO Box 1199
DICKSON ACT 2602

Submissions can also be lodged by e-mail to adjudication@acc.gov.au or by facsimile on (02) 6243 1211.


Any submission you make will be placed on the ACCC's Public Register. You may request that information you provide in a submission to the ACCC be treated as confidential and not placed on the Public Register. Information excluded from the Public Register for reasons of confidentiality will still be considered by the ACCC when reaching its decision. Guidelines for seeking confidentiality are attached for your information.

The ACCC will consider any submissions it receives, including any oral submissions made should a pre-determination conference be called, and will then release a final determination in relation to these applications.

This letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please do not hesitate to contact Nadia Cooke on (03) 9290 1478.

Yours

A handwritten signature in black ink, appearing to read "Nadia Cooke". The signature is written in a cursive style with a large initial 'N'.

 Gavin Jones
Director
Adjudication Branch

GUIDELINES FOR CONFIDENTIALITY CLAIMS

The process whereby the Commission assesses applications for authorisation or notification is very public, transparent and consultative. The *Trade Practices Act 1974* (the Act) requires the Commission to maintain a public register in respect of authorisation and notification applications.

Applicants and interested parties can request that a submission, or part of a submission, be excluded from the public register.

The Commission is required under the Act to exclude from the public register upon request details of:

- (i) secret formulae or process;
- (ii) the cash consideration offered for the acquisition of shares in the capital of a body corporate or assets of a person; or
- (iii) the current manufacturing, producing or marketing costs of goods or services.

However, even if a document does not meet these technical requirements, the Commission may still grant confidentiality where, in the Commission's view, it is desirable to do so.

The Commission also has the discretion, under s89 of the Act, to exclude material from the public register if it is satisfied that it is desirable to do so, either by reason of the confidential nature of the material or for any other reason. The Commission expects that a party claiming confidentiality on these grounds will present a case for its treatment in this manner.

Under Regulation 24 of the *Trade Practices Regulations*, when a request for confidentiality is made to the Commission:

- (a) where the request is that a whole document be excluded, the words "**Restriction of Publication Claimed**" should appear in red writing near the top of each page; and
- (b) where the request is that part of a document be excluded, the words "**Restriction of Publication of Part Claimed**" should appear in red near the top of the first page of each document, and the part for which confidentiality is claimed should also be marked in red. A submission of more than 5 pages should also include a description of the whereabouts of the parts for which confidentiality is claimed.

Applicants, as a matter of course, should remove headers claiming "confidential communication" from all Emails and otherwise, unless they have a particular piece of information that they justify to the Commission deserves exclusion from the public register. If confidentiality is not requested but a header cannot be removed, it should be clearly stated at the beginning of the communication that confidentiality is not requested.

If the Commission denies a confidentiality request, the requesting party may ask that the material be returned. As a matter of practice, the Commission will specify a period (usually 14 days) in which they can request the return of such material. Upon response, the Commission will return the original material and destroy all associated copies. The Commission will not consider this material when reaching its decision.

If the Commission does not receive a response within the specified period, the original material will be placed on the public register.

Information or documents granted confidentiality may be used by the Commission pursuant to its powers generally under the *Trade Practices Act*.

Interested party

Health Consumers Council
Australian Medical Research
Australian Council of Social Service
Combined Pensioners & Superannuants Association of NSW Incorporated
Financial Services Consumer Policy Centre, University of NSW
Institute of Actuaries of Australia
Murdoch Children's Research Institute
John Curtin School of Medical Research
Department of Haematology and Genetic Pathology, Flinders University
Office of the Federal Privacy Commissioner
Consumer Health Forum of Australia
Department of Premier and Cabinet
Queensland Health
Department of Health and Human Services, Tasmania
Department of Human Services, SA
Territory Health Services
ACT Health
Australian Privacy Charter Council
Human Rights and Equal Opportunity Commission
The Centre for Genetics Education
NSW Department of Health Genetics Service
Hunter Genetics
Financial Planning Association of Australia Limited
Australian Huntington's Disease Assoc (NSW)
The St James Ethics Centre
Department of Treasury
Australian Securities and Investments Commission
AMAQ
Genetic Support Council WA (Inc)
Westmead Health
Consumer Credit Legal Centre (NSW) Inc
Consumer Credit Legal Service (WA)
Consumers Federation of Australia C/- Consumer Credit Legal Service Victoria
Senator Natasha Stott Despoja
Biotechnology Australia
Centre for Law and Genetics, Melbourne Law School
PrefSure Life Limited
AXA Health Insurance
Swiss Re Australia limited
AMP Life Limited