

# Cancer gene test ban may spark legal bid

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WOMEN will no longer be able to go to a public hospital to find out whether they have inherited a genetic mutation that causes breast cancer, after the company that holds the licence to the gene patents set a deadline of November 6 for other laboratories to cease testing.

This will force testing for the genes — widely used by women with a family history of the disease — into Genetic Technologies' own Melbourne laboratory, at \$2100 per test.

The move marks the first time in Australia that a company has enforced its proprietary rights over the human body's genetic code. It could trigger an urgent challenge to the validity of patent laws.

Cancer Council Australia medical adviser Graeme Suthers said the law should be revised.

"As a society we have to bite that bullet," he said. "It is essential that Australian families can access testing of genes (through public hospitals)."

The genes in question — BRCA1 and BRCA2 — are implicated in up to 10% of breast cancers. They confer a greatly increased risk of developing the disease, and at a younger than usual age.

The chairwoman of the Breast Cancer Action Group, Janet Green, said testing allowed women to make "an informed decision about prophylactic surgery or certain treatments", and should not depend on ability to pay.

Genetic Technologies chief executive Michael Ohanessian said the change would benefit patients, guaranteeing a four-week maximum to complete a test. "In 2005, some laboratories were averaging 11 months," he said. "Anyone in government would be hard-pressed to defend that ... I believe (the laboratories) are all sub-scale and I believe there would be benefits to taxpayer funds and women's health."

Mr Ohanessian said the \$2100 fee was similar to that charged by other laboratories — about 10 nationwide.

He believed complaints were motivated by "a certain emotiveness when people think about patents in the field of genetics", and "an ideological objection to the private sector".

The company, which is listed on the stock exchange, licenses the genes from Myriad Genetic Laboratories in the US.

Luigi Palombi, an expert in patent law at the Australian National University, said state or federal governments could allow laboratories to continue testing under a Crown-use provision in the Patents Act. But he was unaware of this ever being used.

He said patent law referred only to inventions, not discoveries, and he believed a federal court would find against Genetic Technologies. But the issue had never been tested, and he was not aware of a body that could afford to mount the case.

A Government spokesman said the matter was being investigated by the Australian Consumer and Competition Commission.

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