17 October 2025

Andrea Stone
Director, Insurance Unit
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: geneticstestinglifeinsurance@treasury.gov.au

Dear Ms Stone

Treasury Laws Amendment Draft legislation 2025: Limiting the use of genetic information by life insurers

The Council of Australian Life Insurers (**CALI**) has consistently supported, and advocated for, a legislated ban on the use of genetic tests in life insurance underwriting.

Life insurers help millions of Australians to live in a healthy, confident and secure way. Our members want to support their customers to proactively manage their health and reduce potential health risks. We recognise that genetic testing plays an important role in empowering people to do this in a preventative and personalised way. It has never been the life insurance industry's intention to deter people from taking genetic tests or participating in scientific research. This is why we support a ban on the use of genetic tests in life insurance underwriting.

We want to ensure the law gives people confidence to take genetic tests that may indicate their predisposition for future disease while ensuring life insurers can continue to underwrite based on other information. The underwriting process is critical to delivering affordable and sustainable insurance. It helps fairly manage risks across all insured people.

CALI supports the proposed approach to implement the ban and we have proposed changes to ensure the measure is appropriately drafted to provide certainty for all Australians.

To achieve this, the legislation must:

1. effectively integrate into the existing legislative framework, and duties and limits in relation to insurance contracts;
2. provide clarity and certainty to all stakeholders by:
    a. adopting clear and unambiguous definitions;
    b. providing defences to the operation of the strict liability and civil penalty provisions; and
3. apply only from the date of commencement to new applications for life insurance or alterations to existing life insurance.

We consider that the legislation, as currently drafted, broadly aligns with the policy objective of the ban.

We welcome:

- the preservation of the critical need for life insurers to be able to ask about, and assess, information about an individual's current state of health and any clinically diagnosed medical conditions, irrespective of whether that diagnosis was made through a genetic test;
- the preservation of life insurers' ability to collect family medical history, in accordance with the provisions of the Life Insurance Code of Practice (**Life Code**);
- the ability of customers to voluntarily disclose favourable genetic test results; and
- the mandatory five-year review periods and subordinated regulation-making powers to ensure that the legislation can keep pace with, and accommodate, material changes to the operating environment for life insurers and their customers.

We are concerned, however, that the legislation as proposed:

- contains ambiguous or unclear definitions that inadvertently capture a wide range of standard and essential clinical tests; and
- creates a significant strict liability risk for insurers acting in good faith and consistently with the intent of the ban.

If these risks are not addressed in the drafting of the legislation, it is likely to result in a lack of certainty for both life insurers and customers, and risks the objective of the policy.

We have set out our concerns, and proposed amendments, in greater detail in Attachment A.

Further information

This submission follows CALI's responses to prior information requests and targeted and public consultations regarding the impacts, policy options and design issues of the draft legislation, and is made on a non-confidential basis.

We look forward to continued engagement with the Treasury and Government as this important reform progresses to implementation. Please contact Luke Hyde (General Manager, Policy) at luke.hyde@cali.org.au for further information.

Kind regards

Christine Cupitt
Chief Executive Officer
Council of Australian Life Insurers

About CALI

CALI is the leading voice of life insurance in Australia. We support Australians to make informed choices about their future and help them live in a healthy, confident and secure way over their lifetime.

Our members' products and services give people peace of mind when making important decisions and provide a financial safety net during life's biggest challenges.

We advocate for national policy settings that expand Australians' access to the life insurance protection that suits them when they need it most.

CALI represents all life insurers and reinsurers in Australia. The Australian life insurance industry is today a $26.4 billion industry, employing thousands of Australians and paying billions of dollars of benefits each year.

For more information, visit www.cali.org.au

Attachment A

Recommendations

CALI recommends:

1. the deletion of proposed subsection 33E(1)(c) to the *Insurance Contracts Act 1984* (Cth) (**ICA**);
2. the amendment of the proposed definition of *clinical diagnosis*;
3. the amendment of the proposed definition of *treating medical practitioner*;
4. the introduction of a safe harbour provision for the receipt and handling of unsolicited protected genetic information to preserve the ability of life insurers to undertake routine underwriting without undue legal risk;
5. the amendment of the definition of *solicit*;
6. the introduction of a definition of *use;*
7. the amendment of the definition of *protected genetic information*;
8. the introduction of a definition of *medical research genetic test*;
9. the introduction of a definition of *a disease that is of a genetic nature*; and
10. that the newly proposed section 47A be integrated into the existing section 47 of the ICA.

Analysis

Definitions

1. Meaning of *genetic testing*

While proposed section 33E aligns with our understanding of the intent of the ban, proposed subsection 33E(1)(c) states that genetic testing includes:

(c) *analysis or interpretation of information derived from any product of an individual's gene expression (such as a protein), biomarkers or metabolites, conducted to:*

(i) detect, infer or predict genotypes or genetic variants; or

(ii) predict the individual's risk of developing a disease in the future.

In CALI's view, this definition is likely to prohibit legitimate and essential risk assessment that is not intended to be within the scope of the ban. The wording conflates genotype (an individual's genetic code) with phenotype (the observable expression of genes, lifestyle, and environmental factors). Most of the human body and its functions are products of gene expression, meaning this definition inadvertently captures a vast range of standard clinical tests that are not genomic in nature.

For example, iron studies measure iron levels to diagnose conditions such as haemochromatosis. While the condition is genetic, the test assesses the phenotype (iron levels), not the genotype, and is a standard clinical tool. Similarly, a cholesterol test measures blood lipids, a biomarker, while HbA1c/blood sugar tests assess diabetes risk. All of these are routine clinical tests and inform risk assessment and risk rating in underwriting.

To ensure the legislation appropriately targets and supports the use of predictive genetic testing without inhibiting standard medical underwriting and risk assessment, **CALI recommends the deletion of proposed subsection 33E(1)(c) in its entirety.**

2. Meaning of *clinical diagnosis* and *treating medical practitioner*

Proposed section 11 defines clinical diagnosis as follows:

> *in relation to an individual, means a clinical diagnosis made by any treating medical practitioner of the individual.*

It also proposes to define treating medical practitioner as follows:

> *treating medical practitioner of an individual means a legally qualified medical practitioner who has, or has had, responsibility for medical treatment of the individual:*
>
> *(a) whether or not in Australia; and*
>
> *(b) whether or not on an ongoing or regular basis.*

In CALI's view, these definitions are unsuitable as they don't reflect modern clinical practice. In clinical practice, the achievement of diagnoses is complex. Diagnoses may be made over time, involve multiple clinicians, and may not always be made by a practitioner with an ongoing treatment relationship with the individual.

As practical examples, both Huntington's disease and hypertrophic cardiomyopathy are generally diagnosed by a specialist and referred back to their general practitioner for ongoing management.

A more appropriate and inclusive definition that accommodates the realities of modern clinical pathways, differential diagnoses, and the involvement of various practitioners is necessary to ensure the legislation is future-proof and aligned with actual medical practice.

CALI recommends the amendment of the proposed definitions of *clinical diagnosis* and *treating medical practitioner*.

CALI proposes the following definitions:

> *Clinical diagnosis*
>
> > *Clinical diagnosis, in relation to an individual, means a clinical diagnosis made by a medical practitioner.*
>
> *Medical practitioner*
>
> > *Medical practitioner means a legally qualified medical practitioner.*

These amendments reflect the dynamic nature of clinical practice which includes medical practitioners who:

- Conduct direct clinical assessments or interpret diagnostic investigations;
- May or may not have an ongoing treatment relationship with the individual; and
- May operate in primary care, specialist, consultative, diagnostic laboratories, or remote settings, including telehealth or computer-assisted diagnostic platforms.

3. Meaning of *solicit* – safe harbour

Proposed section 33G(1)(b) states that a person solicits protected genetic information if:

> *the person requests another person:*
>
> > *(b) to provide a kind of information in which that protected genetic information is included.*

This definition is too broad and creates a significant compliance risk for life insurers. The receipt of underwriting requests, such as Personal Medical Attendant Reports or full medical records, could expose life insurers to a strict liability offence and attendant civil penalties if they contain protected genetic information which is inadvertently or unintentionally provided to life insurers without solicitation.

CALI recommends the introduction of a safe harbour provision for the receipt and handling of unsolicited protected genetic information to preserve the ability of life insurers to undertake routine underwriting without undue legal risk.

CALI proposes the addition of a proposed subsection 33G(1)(c):

> (3) *Despite subsection (b), a person does not solicit protected genetic information if the person requests another person to provide a kind of information in which protected genetic information is or may be included, if the person specifies that:*
>
> > *(i) their request excludes the provision of protected genetic information about the individual to whom the request relates; and*
> >
> > *(ii) the other person is requested to ensure that protected genetic information about the individual to whom the request relates is not included in, or is removed or redacted from, the information they provide.*

4. Meaning of *solicit* - notifying of the ability to volunteer favourable results

Life insurers are prohibited by the draft legislation from "soliciting" protected genetic test information. In our view, this would include prompting a customer to provide favourable results.

The draft legislation also does not expressly permit insurers to inform customers of their general ability to voluntarily disclose favourable test results. While the explanatory memorandum indicates that the law is not intended to prevent life insurers from doing this, the

law itself does not say so. The law should state this expressly to give life insurers confidence that they can lawfully inform customers of their ability to volunteer favourable results.

CALI observes that customer outcomes would be improved if life insurers could inform customers of their right to voluntarily disclose favourable test results (and the protections in place if they do) at relevant points in the underwriting process, and for this not to amount to prohibited solicitation.

CALI recommends amendment of the proposed meaning of *solicit* to introduce a provision enabling life insurers to inform customers of their general ability to voluntarily disclose favourable test results.

CALI proposes the following:

> *For the purposes of s33(G)(1), a person does not solicit protected genetic information from another person if the person notifies the other person of the operation and effect of the exception in s33H(3) and provides information about how the other person may provide protected genetic information to the insurer and consent to the use of that protected genetic information for the purposes of s33H(3).*

5. Meaning of *use*

As insurers do not control what information is sent to them by third parties, there is a risk that life insurers will inadvertently receive genetic test results captured by the draft legislation, without the consent of the customer. For example, a customer's doctor may send medical records that contain or refer to genetic testing results. This is risky for the receiving insurer as it may cause a breach and potentially exposure to criminal and civil penalty.

If protected genetic information is inadvertently received, the only way for an insurer to avoid the strict liability offence would be to avoid deciding on the customer's application.

To this end, **CALI recommends that "use" be defined to mean that the information is actually considered and applied in life insurance underwriting.**

This would also mean that where life insurers receive protected genetic information inadvertently or unintentionally they can, acting reasonably, institute a process to ensure that the life insurance underwriting is undertaken without regard to that information (such as by having the assessment performed by a person with no access to that information).

This could also include deleting or redacting the information, or taking any other reasonable steps to ensure the protected genetic information is not "used".

6. Definition of *protected genetic information*

The draft legislation provides that certain things are not protected genetic information – namely, the name of a disease for which the person has received a clinical diagnosis, and also "information about the characteristics, natural history or prognosis of a disease".

For completeness, **CALI recommends that the proposed s33F(2)(b) should also expressly include and refer to "treatment"** (including planned or intended treatment) of a disease here, as information about medical treatment for a clinically diagnosed disease is commonly sought during underwriting.

7. Definition of *medical research genetic tests*

The draft legislation refers to genetic tests in the context of medical research but does not provide a specific definition. Without a definition, there is uncertainty regarding when tests conducted for accredited medical research do not require disclosure.

Customers participating in medical research may inadvertently fall under protected information rules, creating compliance risk and discouraging participation.

CALI recommends the introduction of a definition of *medical research genetic test*:

> *Medical research genetic test means a genetic test conducted as part of a medical research study by an accredited university or medical research institution where the results of the test have not been, and will not be, provided to the individual, or the individual has specifically requested not to receive them.*

8. Definition of *disease of a genetic nature*

The draft legislation makes a regulation-making power in respect of prescribing certain diseases that are "of a genetic nature", without defining what "of a genetic nature" means. As this is the basis of the power, **CALI recommends that "*disease of a genetic nature*" is defined.**

9. Section 47 of the ICA

The draft legislation proposes to introduce a new section 47A into the ICA and shifts some of the content from existing section 47 (relating to pre-existing conditions) into it for the purposes of life insurance.

This is likely to have significant administrative repercussions for insurers' documentation and processes, such as within contracts of insurance and disclosure documents requiring any references to section 47 to be identified and updated to 47A. This is a significant operational and administrative burden, even with the proposed six-month transition period.

CALI recommends the newly proposed section 47A be instead integrated into section 47 (perhaps as further subsections to that section) so that the administrative burden of updating these references across thousands of documents may be avoided.