CALI Council of Australian Life Insurers

26 June 2026

Ms Lynn Kelly
First Assistant Secretary
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Ms Kelly

Consultation - Exposure draft and explanatory statement - Insurance Contracts Amendment (Genetic Testing)

The Council of Australian Life Insurers (CALI) welcomes the opportunity to provide feedback on the draft *Insurance Contracts Amendment (Genetic Testing Protections in Life Insurance) Regulations 2026* (**Regulations**), which support amendments in Schedule 1 to the *Treasury Laws Amendment (Genetic Testing Protections in Life Insurance and Other Measures) Act 2026*, and the Explanatory Statement.

CALI and its members have consistently supported a legislated ban on the use of genetic tests in life insurance underwriting. We recognise that genetic testing plays an important role in enabling Australians to better understand and manage their health and support participation in medical research. It has never been the intention of the life insurance industry to deter individuals from accessing these benefits, and we support measures that provide Australians with confidence to undertake genetic testing.

While CALI supports the Regulations, a number of targeted amendments are required to ensure the framework operates clearly in practice, avoids unintended compliance risk, and aligns with its intended enforcement approach.

CALI supports the proposed Regulations and the framework established under the *Insurance Contracts Act 1984* (**ICA**). We welcome elements that provide clarity and support effective implementation:

1. Clarity on the application of protected genetic information. The prescription of specific genetic predispositions in section 13A(1) provides clear guidance on how the statutory definition operates in practice.
2. Clear distinction between protected and non-protected genetic information, as called for in CALI's submission on the draft legislation. The Regulations appropriately distinguish between genetic predisposition (protected) and clinically diagnosed disease (not protected), supporting the balance between consumer protection and the ongoing use of relevant clinical information in underwriting.
3. Flexibility to accommodate advances in genetic science. The use of prescribed conditions, supported by a broader definition, recognises that genetic science and testing capability will continue to evolve at pace.

CALI attaches from our previous submission dated 17 October 2025 (Attachment 2) the recommendations proposed for the draft legislation. These recommendations (Attachment 2, recommendations 1–10) remain relevant to the effective operation of the Regulations.

While the draft Regulations respond to part of that earlier feedback by providing greater certainty on the application of protected genetic information through new section 13A, a number of recommendations directed at operational implementation do not appear to have been addressed.

We therefore make the following recommendations.

Recommendations

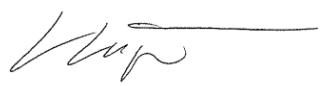
1. **Clarify key definitions (ss 33E–33G)**
   Amend definitions of *genetic testing, clinical diagnosis, treating medical practitioner, solicit,* and introduce a definition of *use* to avoid capturing routine clinical practice and ensure clarity for life insurers, customers and stakeholders in underwriting.
2. **Introduce a safe harbour for unsolicited information (s 33G)**
   Implement a safe harbour provision where life insurers inadvertently receive protected genetic information, to prevent unintended liability when acting in good faith.
3. **Re-consider the infringement notice regime (s 39A)**
   Reconsider the introduction of infringement notices, noting they are typically designed for minor, high-volume contraventions and do not align with the low-volume, higher-significance nature of these obligations which are better dealt with through the civil penalty provisions.
4. **Provide guidance on scope and application (ss 13A, 33F)**
   Issue practical examples on the operation of protected genetic information, including the non-exhaustive list and emerging testing (Attachment A: recommendations 7–9), to support consistent industry application.

The ban should apply to adverse genetic test results and information about whether genetic testing has been undertaken, recommended or intended. It should not prevent life insurers from asking about or using ordinary medical, phenotypic, screening, treatment, family history or diagnostic information, even where that information relates to a condition that may also have a genetic basis.

CALI looks forward to continued engagement with Treasury as this important reform progresses to implementation. CALI will continue to support Treasury to help ensure the Regulations operate clearly, consistently and as intended in practice, supporting customer understanding and positive outcomes across the life insurance system.

This submission is made on a non-confidential basis. Please contact Luke Hyde (General Manager, Policy) at luke.hyde@cali.org.au for more information.

Kind regards



Chris Cupitt
Chief Executive Officer
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About the Council of Australian Life Insurers (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 1: Detailed response

1. Clarity of definitions

CALI previously recommended amendments to key definitions, including "genetic testing", "clinical diagnosis", "treating medical practitioner", "solicit", and the introduction of a definition of "use".

Without these clarifications, there is a risk that routine clinical tests and standard underwriting practices may be unintentionally captured. This creates uncertainty for underwriting processes and risks inconsistent customer outcomes.

2. Safe harbour for unsolicited protected genetic information

CALI previously recommended 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.

Life insurers may inadvertently receive protected genetic information as part of broader medical records or standard underwriting materials requested in the ordinary course of assessing an application. This risk is particularly acute because life insurers do not control the content of medical records, specialist reports, pathology material or other information provided by third parties.

Even where a life insurer does not request protected genetic information, that information may still be provided by a third party. For example, a treating practitioner, specialist, clinic or hospital may provide genetic test results, refer to genetic counselling, or note that genetic testing has been undertaken, recommended or intended.

In the absence of a safe harbour provision, life insurers acting in good faith may be exposed to liability despite not requesting or using the information. Without these clarifications, there is a risk that routine clinical tests and standard underwriting practices may be unintentionally captured.

3. Infringement notice regime

In the context of the strict liability offence and civil penalty framework in section 33H of the ICA, and the infringement notice regime applied through section 39A of the Regulations, CALI considers that the existing liability and civil penalty framework provides a proportionate and effective enforcement response for breaches of this nature.

The Attorney-General's Department *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers* indicates that infringement notices are intended to address minor, high-volume and straightforward contraventions, typically involving lower-level penalties.

By contrast, breaches relating to genetic testing protections raise significant public interest considerations, are expected to occur infrequently, and are not analogous to routine administrative non-compliance. With this context, the introduction of an infringement notice regime may not align with its intended purpose, and CALI therefore challenges the rationale for the proposed approach.

4. Examples of genetic testing information

CALI supports prescribing specific genetic predispositions while making clear under section 13A(2) that the list is not exhaustive. This is an appropriate measure to ensure the framework can adapt to scientific advancements, emerging conditions and new testing methodologies over time.

However, the non-exhaustive nature of the list may create practical implications over time that warrant further consideration. For life insurers, underwriting requires clear and consistently applied boundaries. An open-ended definition means in the future life insurers must interpret whether new or emerging tests fall within scope, increasing the risk of inconsistent application across the industry.

For customers, this same uncertainty may reduce clarity about what information is relevant to disclose and how it may be treated, particularly as medical advances produce tests that sit at the boundary between genetic testing and broader diagnostic or clinical assessment. For example, where a new test combines genetic and non-genetic indicators, it may be unclear whether the result constitutes protected genetic information. This creates a risk of differing interpretations, inconsistent outcomes and potential disputes.

CALI recommends Treasury considers providing practical examples on how section 33F of the ICA is intended to apply to new and emerging forms of testing; and clarifying how to distinguish between genetic testing (captured) and other clinical or diagnostic information (not captured), particularly where tests involve mixed methodologies.

Given the technical medical, legal and operational issues raised by the Regulations, CALI would welcome the opportunity to meet with Treasury to discuss the practical examples outlined in this submission and assist in developing clear, workable guidance ahead of implementation.

Attachment 2: Recommendations from CALI's submission to Treasury dated 17 October 2025

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 avoid