

Secretariat
Senate Economics Legislation Committee
Parliament House
Canberra ACT 2600

21 January 2026

By email: economics.sen@aph.gov.au

RE: Treasury Laws Amendment (Genetic Testing Protections in Life Insurance and Other Measures) Bill 2025

Dear Committee

I attach a submission to your inquiry into the *Treasury Laws Amendment (Genetic Testing Protections in Life Insurance and Other Measures) Bill 2025*.

Please reach out to Dr Jane Tiller at [REDACTED] with any queries.

Yours Faithfully

Dr Jane Tiller

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Attachment: Submission to Treasury dated 12 October 2025 (Submission B)

Submission to Senate Inquiry into *Treasury Laws Amendment (Genetic Testing Protections in Life Insurance and Other Measures) Bill 2025*

***This document refers to our previous submission to Treasury regarding its technical consultation on the design of the ban, dated 13 March 2025 (Submission A), which can be found here:*

<https://doi.org/10.26180/28551068.v1>

It also refers to the more recent submission to Treasury regarding the Exposure Draft and Explanatory memorandum dated 12 October 2025 (Submission B), a copy of which is attached in full to this submission.

The Government should be commended on an excellent draft bill, which will protect Australians against discrimination on the basis of genetic test results, foster trust in genomics, and ultimately enable genomic medicine to save lives through prevention of disease.

In our previous submissions (**Submission A** and **Submission B**), we set out a number of key matters that should be addressed in the final form of the legislation. Many of these have been addressed – this submission will briefly summarise for the Committee those issues which have not been addressed and which could be considered to ultimately strengthen the effect and enforcement of the bill.

In short form, those issues include the protection against discrimination for people who already have discriminatory contracts of insurance (this is the key issue), prohibition on insurance companies inferring genetic test results from ongoing care, alignment of the meaning of protected genetic information with industry code, and the application of penalty provisions to prohibit solicitation.

1. Protection against discrimination for people with existing discriminatory contracts of insurance

In our previous submissions (**A and B**), we discussed the importance of prospectively removing penalties from the policies of individuals who are currently discriminated against on the basis of genetic test results. This is critical to give effect to the intention of the ban as announced by Government in 2024. We consider this is the foremost issue to which the Committee should turn its attention.

Under the current drafting of the bill, the ban will apply in relation to life insurance contract decisions made on or after the date of commencement. A life insurance decision is defined to only apply to decisions in relation to applications for life insurance, and doesn't capture insureds whose only interaction is annual premium adjustments (as life insurance isn't renewed annually, it just has premiums adjusted annually).

This means individuals who have been paying premiums for many years, with a loading attached because of discrimination on the basis of genetic results, would be faced with an unfair choice of retaining cover with discriminatory penalties or cancelling their current policy and being re-underwritten on possibly very unfavourable terms (due to the passage of time). These are individuals who have done the right thing, declared their adverse results to insurers, and in many cases paid additional sums to insurers for years.

During the Assistant Treasurer Stephen Jones' [press conference](#) on 12 September 2024 where he announced the total ban, he made the following comment about the intent and effect of the promised reform:

*"Most life insurance contracts are annual contracts, renewed annually. So somebody renewing under the new law, the contract would have to be offered in accordance with the new law. **It is the government's very firm belief – and it will be reflected in the law – that the intent of that law is to ensure somebody is not***

discriminated against because they have had an adverse genetic test. It will be a very firm position, and that will be reflected within the law.

The Minister was very clear that the intent of the law will be to ensure no Australians are discriminated against in any way because they have had an adverse genetic test. Unfortunately the mechanism of annual renewal is not available to achieve this intent, as this was slightly mischaracterised by the Minister.

The current Assistant Treasurer, Dr Daniel Mulino, noted at the [press conference](#) on 26 November 2026 (where he announced that legislation would be introduced into Parliament) that:

“This policy will apply prospectively to all insurance policies made after this point. I will work constructively with the sector to work with them to see how people who have policies in place can seek to ensure that if they have had genetic tests, they can work with their insurers to ensure that that is reflected appropriately.”

We have not yet been made aware of any progress which has been made regarding this intention. We have some concerns about proposed solutions which rely on voluntary action by the life insurance industry, which have not been progressed or agreed as yet. Previous invitations were made to the Council of Australian Life Insurers to voluntarily cease using genetic test results to discriminate while legislation was prepared, including by Minister Jones at the [press conference](#) on 12 September 2024, where he said, *“it is my expectation that most if not all players within the industry will move on a voluntary basis to ensure that these provisions are operating in the context that they offer from here on in.”*

Further, on 27 November 2024, when Minister Jones was asked in [Question Time](#) for an update on the promised legislation, he said, *“... I've also had productive discussions with the Council of Australian Life Insurers, who have committed to ensuring that, prior to legislation coming before this House, they will voluntarily introduce a ban to ensure this material is not used in the way we are all concerned about.”*

Despite repeatedly stating their support for the ban and calling on the government to implement legislation, the industry did not take any steps to voluntarily introduce a ban as foreshadowed by the Minister.

While we accept the challenge in legislative principles with regard to the issue of retrospectivity, we submit that ensuring discriminatory penalties are removed from contracts of insurance going forwards can be achieved without contravening these principles. We do not suggest that insurers should retrospectively refund premiums, only that penalties should be removed prospectively. Specifically, the possible Constitutional issue raised by the proposed changes are addressed in **Submission B** (attached) at pp 6-7.

In the Council of Australian Life Insurer’s [previous submission to Treasury](#) in January 2024, it highlighted the extremely small number of applications that receive adverse underwriting outcomes on the basis of genetic results – reporting that less than 0.05% of their underwriting decisions in 2022 resulted in adverse outcomes for consumers on the basis of genetic test results (a total of 90 cases). On this basis, the impact of removing loadings or exclusions prospectively for insureds who have been discriminated against already should be negligible in the context of the entire life insurance market. Given the additional premiums collected from many of these individuals by insurers in the past, it is not unreasonable to ask insurers to apply modest resources to rectify the discrimination applied and cease to discriminate prospectively against current clients in a way that is unlawful for new life insurance applications.

2. Prohibition on insurance companies inferring genetic test results from ongoing care

Recommendation 1.8 of Submission A was *“The legislation should ensure that insurers are prohibited from using details of applicants’ or family members’ ongoing medical care (including but not limited to risk surveillance, medication prescription or participation in clinical trials) to refuse to consider applications until completed, inferring predictive genetic risk or discriminating against applicants.”*

This was raised in response to anecdotal reports from Canada indicating that insurers were inferring genetic results from other pieces of legally obtained medical information, and using that information to delay consideration of insurance applications.

In **Submission B**, we suggested (Recommendation 3.1) an additional sub-clause to section **33F** as follows:

33F Meaning of *protected genetic information*

(3) Genetic information is not excluded from being ***protected genetic information*** on the basis that it is inferred through the use of other information collected about an individual, including surveillance type or frequency, or eligibility for clinical trials, medication or other medical care.

In **Submission B** (Recommendation 3.2), we suggested some amendments to the EM to explain this further.

We continue to consider that the legislation would be improved by including this clarifying sub-clause.

3. Alignment of meaning of protected genetic information with industry code

In **Submission B** (pp 10-11), we noted that the exclusion in section **33F(2)(b)** excludes from the meaning of protected genetic information the name of a disease for which **any** genetic relative has received a clinical diagnosis, while the Council of Life Australian Life Insurers (CALI) Code of Practice (**Code**) only allows insurers to collect information about *“first degree blood relatives (parents, children and siblings).”*

This means the legislation currently casts a much wider net than the Code in the exemptions to its protection, and could apply to diagnoses of disease in third cousins or great-aunts, which the Code currently prohibits insurance companies from collecting.

We submit that the legislation would be improved by aligning with the Code to ensure that the legislation does not undermine the protections available under the Code, or provide less protection than the Code. Further, although we understand that most life insurance companies are part of CALI, it is not mandatory, meaning life insurers could operate outside of the Code’s operation in Australia and be subject to less stringent requirements under this Act than insurers who are part of CALI.

In Recommendations 3.3 and 3.4 of Submission B, we suggested amendments to **s33F** and the definitions as follows:

s33F

“(2) However, neither of the following is protected genetic information about an individual (subject to subsection (4)):

- (a) the name of a disease for which the individual (or a first-degree genetic relative of the individual) has received a clinical diagnosis, whether or not the clinical diagnosis is based on or informed by genetic testing”

“first-degree genetic relative of an individual means a genetic relative of an individual who is parent, child or sibling of that individual”.

4. Application of penalty provisions to solicitation (s33H)

In **Submission B** (p12-14), we discussed the definition of a **life insurance contract decision** and the constraints of the penalty provisions, which do not apply to solicitation of genetic information unless underwriting occurs. In that submission we set out some scenarios of concern, which have been reported to us previously by various stakeholders.

At 1.33 of the EM to the bill introduced to Parliament, a section was added which reads:

“Additional considerations relating to solicitation

1.33 The ICA 1984 provides that parties to a contract of life insurance have a duty to act with the utmost good faith towards to the other party (see Part 2 of the ICA 1984). The duty covers any matters in relation to the contract including negotiations before the contract is signed. A breach of the duty of utmost good faith is a breach of the ICA 1984, with an insurer subject to a civil penalty of 5,000 penalty units for such a breach. As insurers are typically body corporates, they will be subject to a greater penalty than this in accordance with section 75D of the ICA 1984.

1.34 While the amendments made by Schedule 1 to the Bill do not impact the existing operation of the duty of utmost good faith, and both the duty and the ban operate independently of each other, it is possible that certain conduct by an insurer or underwriter acting on behalf of the insurer to solicit or use protected genetic information may contravene either or both sets of provisions.

1.35 For example, upon an insured’s agent (such as a financial adviser) making inquiries to an insurer or underwriter to assess life insurance cover options for the insured, an insurer or underwriter may advise the agent that they will only proceed with considering the insured’s application for life insurance cover if the life insured undergoes genetic testing and the insured or their agent provides the results of such a test to the insurer or underwriter. However, and subject to the specific circumstances of the scenario, the insurer may be in breach of the duty of utmost good faith given such a request may be taken to have been made dishonestly and unfairly given an insurer would not be able to rely on such requested information in the future to make a life insurance contract decision without breaching the ban.”

This addition goes some way towards addressing our concerns, we still consider that the bill would be strengthened through amendments to the legislation itself.

In Submission B, we suggested ([Recommendation 4.1](#)) an additional sub-clause to be added to the definition of **life insurance contract decision**:

(e) whether or not to consider, or to delay considering, an application for insurance that has been provided to, or about which an insured or an agent acting on behalf of the life insured has made inquiries with, the insurer.

We also suggested a new section could be introduced to prohibit solicitation ([Recommendation 4.2](#)), which is not currently penalised unless and until proven discriminatory underwriting actually occurs. This would align Australia’s legislation with Canadian laws.