

Comments: Exposure Draft of the Treasury Laws Amendment Bill 2025

Submission to the Treasury

14 October 2025

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The Commission's key functions include:

- **Access to justice:** We help people to resolve complaints of discrimination and human rights breaches through our investigation and conciliation services.
- **Fairer laws, policies and practices:** We review existing and proposed laws, policies and practices and provide expert advice on how they can better protect people's human rights. We help organisations to protect human rights in their work. We publish reports on human rights problems and how to fix them.
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Overview

Summary

The Australian Human Rights Commission (Commission) welcomes the opportunity to provide a written submission to the Australian Government Treasury (Treasury) on the Exposure Draft of the *Treasury Laws Amendment Bill 2025: Limiting the use of genetic information by life insurers* (the Bill). The Bill will amend the *Insurance Contracts Act 1984* (Cth) (the Act) to establish a ban on the use of genetic information by life insurers.

The Commission previously made submissions to consultations by Treasury on the ban:

- [‘Use of genetic testing results in life insurance underwriting’](#) (February 2024 Submission)
- ‘Ban on the use of adverse genetic testing results in life insurance’ (March 2025 Submission).

The Commission supports the ban on the use of genetic information in life insurance contracts, including the decision to enter into a life insurance contract and the terms and conditions of the life insurance contract.

The Commission is encouraged to see that some of its recommendations from previous submissions have been accepted and reflected in the Exposure Draft, such as the prohibition on the use of protected genetic information in any way that disadvantages the insured, any life insured or any third-party beneficiary.

The Commission continues to have concerns about disability discrimination in life insurance more broadly, but for the purposes of this submission, focuses on the following specific concerns:

- the meaning of protected genetic information
- consent is not a defined term, and can be provided by an agent
- the commencement and application of the ban
- the regulation-making power affecting the meaning of key terms
- periodic review of the operation of the ban.

The Commission notes concurrent reform of the *Disability Discrimination Act 1992* (Cth) (Disability Discrimination Act),¹ and the next suite of reforms to the *Privacy Act 1988* (Cth) (Privacy Act) will interact with aspects of this ban and life insurance practices. The Australian Government must consider the impact of these reforms across the regulatory environment to ensure a cohesive and consistent legislative framework with clear timelines for implementation.

Recommendations

The Commission makes the following recommendations:

Recommendations

1. The meaning of 'protected genetic information' in s 33F of the Bill should be amended to include 'inferred genetic information based on information about a person's ongoing medical care, including risk surveillance activities, prescribed medications, participation in preventative health care (such as clinical trials), or any other indirect method of inferring increased risk or genetic test results.'
2. 'Consent' should be defined under s 11 of the *Insurance Contracts Act 1984* (Cth) in such a way as to ensure express, full, free and informed consent is a requirement.
3. Subsections 33H(3)(a) and (c) of the Bill should be amended to remove the ability of an insurance broker to act as an agent of the life insured.
4. The ban on the use of genetic information should apply to existing policies and in-progress applications from the commencement of the ban, so that any existing penalties, loading, exclusions or other adverse underwriting outcomes imposed due to the use of protected genetic information are removed.
5. Sections 33E(2) and 33F(5) of the Bill should be amended to remove the words 'Regulations made for the purposes of this subsection have effect despite anything else in this section'.
6. Section 33J of the Bill should include a requirement that the review of the ban consider the effectiveness of the provisions to eliminate discrimination.

1 Specific concerns about the Exposure Draft

This section describes the Commission's concerns about specific provisions in the Exposure Draft. It sets out the Commission's concerns regarding the following:

- the meaning of protected genetic information does not include inferred genetic information
- consent is not a defined term, and can be provided by an agent such as an insurance broker
- the application of the ban does not include life insurance contracts that exist prior to the commencement date
- the regulation-making power can affect the meaning of key terms
- periodic review of the operation of the ban criteria.

The meaning of protected genetic information

The Exposure Draft defines 'protected genetic information' to include information regarding genetic testing (including whether a person has undergone, intends to undergo or has been recommended genetic testing), or information about genetic testing carried out and the results. The Exposure Draft excludes from 'protected genetic information' a clinically diagnosed disease and information about the characteristics, natural history or prognosis of the clinically diagnosed disease.

In its March 2025 Submission, the Commission recommended that insurers are prohibited from making adverse inferences based on a person's ongoing medical care information, including risk surveillance activities, prescribed medications, participation in preventative health care (such as clinical trials), or any other indirect method of inferring increased risk or genetic test results.²

It is essential that insurers are prevented from sidestepping the ban on the use of genetic information through inferring genetic status based on a person's medical care. The legislation should therefore explicitly include such medical care information within the definition of 'protected genetic information'. This aligns with the recommendations made by the A-GLIMMER report.³

Recommendation 1: The meaning of 'protected genetic information' in s 33F of the Bill should be amended to include 'inferred genetic information based on information about a person's ongoing medical care, including risk surveillance activities, prescribed medications, participation in preventative health care (such as clinical trials), or any other indirect method of inferring increased risk or genetic test results.'

Consent is not defined, and can be provided by an agent

The Exposure Draft provides an exception to the strict liability offence and civil penalty set out in ss 33H(1) and (2), in circumstances where the protected genetic information is provided with written consent. Several conditions must be met for this exception to apply. The Commission particularly welcomes the requirement that the use of the protected genetic information cannot disadvantage the insured.

The Commission has concerns, however, about the following:

- consent is not a defined term in the Exposure Draft
- consent can be provided by an agent of the life insured acting on behalf of the life insured.

Defining 'consent' under s 11 of the Act is essential to ensure the requirement for express, full, free and informed consent. The Commission acknowledges that the exposure draft requires written consent. However, a defined term will ensure clarity and provide a safeguard for those whose genetic information is being shared.

When a word is not defined in legislation, it is taken to have its ordinary meaning. Consent can in many contexts be express or implied. For example, in the Privacy Act, consent means express or implied consent.⁴ Given the sensitivity of genetic information, protecting the privacy of individuals should be a priority. A high bar required for consent as defined will also uphold universal standards of legal capacity.

Recommendation 2: 'Consent' should be defined under s 11 of the *Insurance Contracts Act 1984* (Cth) in such a way as to ensure express, full, free and informed consent is a requirement.

The Commission is concerned that consent can be provided to an insurer by an agent, particularly an insurance broker, and questions whether it is appropriate that a third-party agent can provide written consent. According to the Exposure Draft Explanatory Materials (EM), an agent may be a parent, guardian, power of attorney or an insurance broker.⁵

Legislation that authorises personal information to be released or consented to by a third-party can diminish rights to legal capacity and privacy and can create or promote conflicts of interest in insurance practices. The universal standard of legal capacity recognises that all people inherently possess legal capacity that must be upheld on an equal basis.⁶ This includes the ability for a person to make decisions on behalf of themselves and to have those decisions legally recognised. Article 12 of the United Nations *Convention on the Rights of Persons with Disabilities* guarantees this right for people with disability, including support

for decision-making, as opposed to substitute decision-making, and safeguards to prevent abuse.⁷

Guardians are typically appointed through a State or Territory tribunal body and are bound to act in accordance with duties set out in legislation.⁸ Similarly, powers of attorney are regulated by State and Territory laws that establish how to make a power of attorney, the duties of an attorney, and provide jurisdiction to tribunals and courts to ensure oversight.⁹ They are required to avoid conflicts of interest.¹⁰

Powers of attorney and guardians are generally required by law to act in the best interests or, in some jurisdictions, to give effect to the will and preferences of the person they represent. The Commission's March 2025 submission points to the Australian Law Reform Commission's National Decision-Making Principles as a framework for aligning decision-making laws with CRPD standards and principles. Such a recommendation is beyond the scope of this consultation, but remains relevant.

In the absence of a comprehensive, nationally consistent supported decision-making mechanisms, the Commission accepts the proposal for insurers to accept written consent from parents, guardians and powers of attorney.

However, the Commission does not agree that agents such as insurance brokers should have the power to provide written consent on behalf of a life insured. While there is a Code of Practice for insurance brokers, the Code is not law and is only binding on those that voluntarily subscribe to it. Insurance brokers can act for both a client seeking life insurance and the insurer, and according to the Code cannot act for both if it would be contrary to the client's best interests.¹¹ Where guardians and powers of attorney are obliged not to profit for their position, insurance brokers derive financial benefit from theirs.

The EM provides that written consent will be in a specific and self-contained document and that ASIC can approve a form for the purpose of providing written consent.¹² Written consent can, however, be obtained from an agent of the person seeking life insurance.¹³ While the written consent may require a specific, approved form, the way an agent obtains legal authority to act in the shoes of the life insured depends on the nature of the agent relationship. A power of attorney, for example, requires the signing of a prescribed form in front of a prescribed witness. There is no standard process by which legal authority can be given to an insurance broker, and it is unlikely that such authority will need to be witnessed.

The expectation that written consent for the sharing of genetic information provided by an agent is a specific, self-contained and prescribed form, is not a sufficient safeguard. An insurer cannot be confident that consent is full, free and

informed unless it is provided directly by the person to whom the genetic information relates.

Recommendation 3: Subsections 33H(3)(a) and (c) of the Bill should be amended to remove the ability of an insurance broker to act as an agent of the life insured.

Commencement and application of the ban excludes existing policies

The Exposure Draft proposes that the ban on the use of protected genetic information should apply to life insurance contract decisions made on or after the date of commencement. The ban would only apply to life insurance contract decisions made before the commencement date if the contract is being varied, reinstated or extended by agreement. According to the EM, the ban will not apply to life insurance contracts when there are automatic variations.¹⁴

This carve out unfairly disadvantages those who have previously received adverse underwriting outcomes based on genetic information. It is not sufficient that the ban applies to existing life insurance contracts only when there is express agreement between the insurer and the insured for a contract to be varied, including a reinstatement or extension of a policy.¹⁵ The ban will not apply, for example, to ongoing long-term life insurance contracts with annual premium adjustments.

Such an outcome goes against the intent of these amendments and the introduction of the ban. All genetic discrimination should be prohibited from the date of commencement of the ban, regardless of when the life insurance contract was entered into.

The Commission is not suggesting that retrospective action, such as refunds for past premiums paid, is required. However, life insurance contracts that exist at commencement of the ban should not maintain any penalties, loading, exclusion or other adverse underwriting outcomes based on their protected genetic information and these should be proactively removed from the commencement date. This aligns with the recommendations made by the A-GLIMMER report.¹⁶

The Commission appreciates that there is a necessary burden on insurers to proactively assess existing life insurance contracts. To lessen the burden, a sufficient transition period can be prescribed to provide adequate time for these assessments to take place.

Recommendation 4: The ban on the use of genetic information should apply to existing policies and in-progress applications from the commencement of the ban, so that any existing penalties, loading,

exclusions or other adverse underwriting outcomes imposed due to the use of protected genetic information are removed.

Regulation-making power affecting meaning of key terms

The Exposure Draft provides that the meanings of 'genetic testing' and 'protected genetic information' can be amended through the regulations and override the meanings as set out in the legislation.

It is not appropriate for regulations to have the power to limit or expand on the meaning of terms as defined in legislation. The Commission acknowledges that the meaning of terms such as 'genetic testing' and 'protected genetic information' must be able to keep pace with medical advances. The Commission recommended in its March 2025 Submission that regulations be allowed to prescribe tests to be included in the definition of 'genetic test'.¹⁷ Such provisions for regulation-making provides a safety net for when there is progress in the field.

However, regulations should not have the ability to override the meaning as set out in the Act. Sections 33E(2) and 33F(5) as currently drafted provide that regulations will have effect 'despite anything else in this section'. This means, for example, that the regulations can prescribe information that is or is not protected genetic information even if that contradicts or goes against how protected genetic information is defined in s 33F(1). This dilutes the protection of the ban.

The EM justifies the extensive power of the regulations on the basis that it will allow the Government to keep up to date the meaning of genetic testing and reflect changes and advance in medicine in a timely manner. It is noted that the regulation-making power will be subject to parliamentary scrutiny.¹⁸ This is not sufficient justification for such extensive power. Substantial amendments to the meaning of prescribed terms should only be done through legislative processes and appropriate scrutiny.

Recommendation 5: Sections 33E(2) and 33F(5) of the Bill should be amended to remove the words 'Regulations made for the purposes of this subsection have effect despite anything else in this section'.

Periodic review of the operation of the ban

The Commission welcomes the inclusion in the Exposure Draft of provisions requiring periodic 5-year review of the operation of the ban. The stated aims of the review are to consider whether the provisions are effective in providing certainty to individuals on the use of protected genetic information and to identify any unintended consequences of the provisions. The Commission is concerned that the scope of the review does not specifically include the

requirement to consider the effectiveness of the ban or permanent exemption (relating to consent) to eliminate discrimination.

Recommendation 6: Section 33J of the Bill should include a requirement that the review of the ban consider the effectiveness of the provisions to eliminate discrimination.

The Commission's Free & Equal report called for a review of all existing permanent exemptions under federal discrimination law, identifying the exemption in section 46 of the Disability Discrimination Act as one that warrants particular scrutiny.¹⁹ The Commission recommended a broad review of section 46 in its submission to earlier consultations on the ban,²⁰ and in its submission to the review of the Disability Discrimination Act.

Reviews of permanent exemptions, including section 46, should be carried out on a periodic basis to ensure that the scope of an exemption remains necessary, reasonable and proportionate in the circumstances. Any review should consider whether the exemption should be continued or removed, and if continued, be time limited and regularly reviewed, or sunsetted.

Endnotes

- ¹ See Attorney-General's Department (Cth), 'Review of the Disability Discrimination Act' (Webpage, 2025) <<https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/australias-anti-discrimination-law/review-disability-discrimination-act>>.
- ² Australian Human Rights Commission, *Ban on the use of adverse genetic testing results in life insurance*, Submission to Australian Treasury, dated 26 March 2025 (March 2025 Submission), recommendation 4.
- ³ See submission made by the [Australian Genetics and Life Insurance Moratorium: Monitoring the Effectiveness and Response \(A-GLIMMER\) project dated 13 March 2025](#) (A-GLIMMER submission), recommendation 1.8.
- ⁴ *Privacy Act 1988* (Cth) s 6.
- ⁵ See Exposure Draft Explanatory Materials [1.32].
- ⁶ Committee on the Rights of Persons with Disabilities, *General Comment No. 1 (2014) on Article 12: Equal recognition before the law*, UN Doc CPRD/C/GC/1 (19 May 2014) [25]. See also *United Nations International Covenant on Civil and Political Rights*, GA 2200A (XXI) (23 March 1976, adopted 16 December 1966) art 16 ('ICCPR'); *United Nations Universal Declaration of Human Rights*, GA Res 217/A(III) (adopted 10 December 1948) art 6.
- ⁷ *United Nations Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008) art 25(e) art 12.
- ⁸ See for example s 41 of the *Guardianship and Administration Act 2019* (Vic), which includes the requirement to act in accordance with general principles and decision-making principles.
- ⁹ See for example the *Powers of Attorney Act 2014* (Vic), *Powers of Attorney Act 1998* (Qld), *Powers of Attorney Act 2003* (NSW).
- ¹⁰ See for example s 63(1) of the *Powers of Attorney Act 2014* (Vic), s 41 of the *Guardianship and Administration Act 2019* (Vic), s 6C of the *Powers of Attorney Act 1998* (Qld), s 4 of the *Guardianship Act 1987* (NSW)
- ¹¹ 2022 Insurance Brokers Code of Practice, [5.3].
- ¹² Exposure Draft Explanatory Materials [1.33]-[1.34].
- ¹³ *Ibid.*

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¹⁴ Ibid [1.101].

¹⁵ See Exposure Draft Explanatory Materials [1.101].

¹⁶ A-GLIMMER submission.

¹⁷ March 2025 Submission, recommendation 7.

¹⁸ Exposure Draft Explanatory Materials [1.61]-[1.62].

¹⁹ See Australian Human Rights Commission, *Free and Equal: A reform agenda for federal discrimination laws* (Position Paper, December 2021) 273-6 <[Free and Equal: A reform agenda for federal discrimination laws \(2021\) | Australian Human Rights Commission](#)>

²⁰ Australian Human Rights Commission, *Use of genetic testing results in insurance underwriting*, Submission to Australian Treasury, dated 16 February 2024 (February 2024 Submission)