EXPOSURE DRAFT EXPLANATORY STATEMENT

Issued by authority of the Assistant Treasurer and Minister for Financial Services

Insurance Contracts Act 1984

Insurance Contracts Amendment (Genetic Testing Protections in Life Insurance) Regulations 2026

Section 78 of the *Insurance Contracts Act 1984* (Insurance Contracts Act) provides that the Governor-General may make regulations prescribing matters required or permitted by that Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to that Act.

Subsection 33F(5) of the Insurance Contracts Act provides that the regulations may prescribe information that is taken to be, or not to be, protected genetic information. Section 75X of the Insurance Contracts Act provides that prescribed offences and civil penalty provisions are subject to an infringement notice under Division 2 of Part IXA of the Insurance Contracts Act.

The purpose of the *Insurance Contracts Amendment (Genetic Testing Protections in Life Insurance) Regulations 2026* (Regulations) is to amend the *Insurance Contracts Regulations 2017* (Insurance Contracts Regulations) to support amendments made by Schedule 1 to the *Treasury Laws Amendment (Genetic Testing Protections in Life Insurance and Other Measures) Act 2026* (the Amending Act).

Schedule 1 to the Amending Act amends the Insurance Contracts Act to establish a ban which prohibits insurers from using certain information about an individual's (or a genetic relative of the individual) genetic testing results to inform the offer of life insurance cover, or the terms and conditions on which the cover is offered (defined as 'protected genetic information'). A contravention of the ban attracts a strict liability offence and civil penalty, with regulatory responsibility for monitoring and enforcement conferred on the Australian Securities and Investments Commission (ASIC). Schedule 1 also amends the *Disability Discrimination Act 1992* to align Australia's anti-discrimination law with the ban. The Amending Act received Royal Assent on 8 April 2026, with the ban commencing on 8 October 2026.

The amendments implement the Government's decision which it announced in September 2024 to legislate a total ban on the use of adverse genetic results by life insurers. The amendments provide certainty to individuals that undertaking genetic testing, including through participation in health or medical research, will not impact their ability to obtain life insurance cover, or the terms and conditions of that cover. This certainty is intended to encourage the uptake of genetic testing, supporting individual, public health and scientific benefits.

The Regulations support the amendments in Schedule 1 to the Amending Act by:

- prescribing information as protected genetic information if it relates to genetic testing for listed genetic predispositions, to provide certainty to consumers, health practitioners and insurers as to the application of the ban; and

- prescribing the strict liability offence and civil penalty provision for contravention of the ban as being subject to the infringement notice scheme under the Insurance Contracts Act, thereby supporting ASIC's ability to deter and address non-compliance in relation to the ban.

The Regulations are a legislative instrument for the purpose of the *Legislation Act 2003* (Legislation Act). The Regulations are subject to disallowance under section 42 of the Legislation Act and will be repealed automatically by section 48A of that Act if they are not disallowed. The Insurance Contracts Regulations are subject to sunsetting under the Legislation Act.

The Regulations commenced at the same time as Schedule 1 to the Amending Act, being 8 October 2026.

The Insurance Contracts Act does not specify any conditions that need to be satisfied before the power to make the Regulations may be exercised. Section 4 of the *Acts Interpretation Act 1901* enables regulations to be made in anticipation of the commencement of the relevant authorising provisions in Schedule 1 to the Amending Act.

Details of the Regulations are set out in Attachment A.

ATTACHMENT A

Details of the *Insurance Contracts Amendment (Genetic Testing Protections in Life Insurance) Regulations 2026*

Section 1 – Name

This section provides that the name of the regulations is the *Insurance Contracts Amendment (Genetic Testing Protections in Life Insurance) Regulations 2026* (Regulations).

Section 2 – Commencement

Schedule 1 to the Regulations commenced at the same time as Schedule 1 to the *Treasury Laws Amendment (Genetic Testing Protections in Life Insurance and Other Measures) Act 2026* (Amending Act), being 8 October 2026.

Section 3 – Authority

The Regulations are made under the *Insurance Contracts Act 1984* (Insurance Contracts Act).

Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 – Amendments

Schedule 1 to the Regulations sets out amendments to the *Insurance Contracts Regulations 2017* (Insurance Contracts Regulations). All legislative references in this attachment are to the Insurance Contracts Regulations unless otherwise stated.

Item [1] – Part 2 (heading)

Item 1 repeals the heading of Part 2, which was 'Disclosures and misrepresentations', and substitutes 'Part 2 – Disclosures, misrepresentations and use of certain information'. This reflects the expanded content of Part 2, as discussed below.

Item [2] – At the end of Part 2

Item 2 adds new Division 4, which is headed "Use of protected genetic information in relation to contracts of life insurance" at the end of Part 2.

Section 13A

Division 4 includes new section 13A which is headed "Information taken to be protected genetic information".

Section 33F of the Insurance Contracts Act establishes the concept of *protected genetic information* which defines the information relating to genetic testing that is protected by the ban. Paragraphs 33F(1)(a) and (b) of the Insurance Contracts Act provide that protected

genetic information about an individual is information about whether an individual (or a genetic relative of the individual) has undergone, intends to undergo, or has been recommended to undergo genetic testing, or information about any genetic testing undertaken, including the results of such testing. As information about whether an individual has a genetic predisposition to a disease, and the specifics of that predisposition, can generally only be identified through genetic testing, this information is covered by the meaning of protected genetic information. However, subsection 33F(2) of the Insurance Contracts Act provides that protected genetic information about an individual does not include information about a disease, as defined in subsection 11 of the Insurance Contracts Act, for which an individual has been clinically diagnosed, irrespective of whether that diagnosis is based on or informed by genetic testing.

Subsection 33F(5) of the Insurance Contracts Act provides that the regulations may prescribe information that is taken to be, or not to be, protected genetic information. New subsection 13A(1) provides that information mentioned in paragraphs 33F(1)(a) and (b) of the Insurance Contracts Act is protected genetic information if the information relates to genetic testing for any of the following genetic predispositions (noting this list is not exhaustive as per new subsection 13A(2), as discussed below):

a) alpha thalassemia;
b) BRCA1 associated hereditary cancer syndrome;
c) BRCA2 associated hereditary cancer syndrome;
d) familial hypercholesterolemia;
e) familial multiple polyposis syndrome (including, but not limited to, familial adenomatous polyposis and adenomatous polyposis coli);
f) hereditary breast and ovarian cancer syndrome;
g) hereditary leiomyomatosis and renal cell carcinoma;
h) Huntington disease;
i) Li-Fraumeni syndrome;
j) Lynch syndrome;
k) MYH associated polyposis;
l) neurofibromatosis type 1;
m) neurofibromatosis type 2;
n) Von Hippel Lindau syndrome.

Genetic terminology is complex and evolving, and some genetic predispositions are commonly described using disease-like nomenclature (such as syndrome) or have a high penetrance rate, which may create uncertainty as to whether information relates to a genetic predisposition or a disease for the purposes of the ban. By expressly listing specific genetic predispositions, the Regulations remove this ambiguity and ensure that information about genetic testing for those predispositions is clearly captured by the meaning of protected genetic information, consistent with the policy intent. This provides certainty and clarity for consumers, health practitioners and insurers, and supports consistent application of the ban.

For the avoidance of doubt, information about a disease for which an individual has been clinically diagnosed is not protected genetic information, even where that disease is associated with a listed genetic predisposition. For example, new paragraph 13A(1)(j) clarifies that information derived from genetic testing confirming that an individual has Lynch syndrome is protected genetic information. However, if an individual has been clinically diagnosed with a disease associated with Lynch syndrome, such as colon cancer,

information about the diagnosis of colon cancer is not protected genetic information, regardless of whether that diagnosis was based on or informed by the individual's genetic test result. For the avoidance of doubt, information about any genetic testing undergone for Lynch syndrome would continue to be protected genetic information for the purposes of the ban.

Similarly, Huntington disease illustrates why it is necessary to clarify the application of the ban to certain genetic predispositions. Genetic testing can identify that an individual has a genetic variant associated with Huntington disease many years before any symptoms manifest, with the same terminology (i.e. 'Huntington disease') commonly used to describe both the genetic predisposition and the clinically diagnosed disease. New paragraph 13A(1)(h) clarifies that information relating to genetic testing for Huntington disease is protected genetic information. However, information that an individual has been clinically diagnosed with Huntington disease, based on medical assessment and the manifestation of symptoms, is information about a clinically diagnosed disease and is not protected genetic information, regardless of whether that diagnosis was based on or informed by the individual's genetic test result. For the avoidance of doubt, information about any genetic testing undergone for Huntington disease would continue to be protected genetic information for the purposes of the ban.

New subsection 13A(2) provides that section 13A does not limit the things covered by subsection 33F(1) of the Insurance Contracts Act. The intent of new subsection 13A(2) is to clarify that the list of genetic predispositions listed at subsection 13A(1) is not exhaustive, and that information about genetic testing for any other genetic predispositions that are not listed is still protected genetic information.

Interactions with section 47 of the Insurance Contracts Act

Subsections 47(3) and (4) of the Insurance Contracts Act provide that, in determining whether an insurer may rely on a contractual provision limiting liability for a sickness or disability existing at the time the contract was entered into, the insurer must disregard any genetic predisposition to disease for which no clinical diagnosis had been made at that time. It is intended that genetic predispositions are treated consistently under subsections 47(3) and (4) with their treatment under the ban, including in relation to the listed genetic predispositions in subsection 13A(1).

Interactions with the *Disability Discrimination Act 1992*

Schedule 1 to the Amending Act amends section 46 of the *Disability Discrimination Act 1992* (DDA) to provide that discrimination against another person on the grounds of the other person's disability is not reasonable in relation to the provision of a life insurance policy if it is based on protected genetic information. The reference to 'protected genetic information' in the DDA relies on its meaning in section 33F of the Insurance Contracts Act. Accordingly, the amendments made by Item 2 will also apply to the reference to protected genetic information in the DDA.

Item [3] – Part 4A

Item 3 repeals existing Part 4A and substitutes it with a new Part 4A. The heading to Part 4A is changed from 'Miscellaneous' to 'Enforcement' to more accurately reflect the revised content and purpose of that Part.

Section 39A

Division 2 of Part IXA of the Insurance Contracts Act sets out a standard framework under which infringement notices can be issued. To ensure flexibility and efficiency in keeping the infringement notice regime fit for purpose, the framework was designed so that regulations can list provisions that would be subject to infringement notices. Section 39A lists the provisions which are subject to an infringement notice under the Insurance Contracts Act.

As part of the repeal and substitution of Part 4A, Item 3 repeals and substitutes section 39A with a reformatted version. The heading to section 39A is amended from "Infringement notices—prescribed offences" to "Infringement notices" to reflect its revised content.

New subsection 39A(1) prescribes the offence provisions that are subject to an infringement notice under the Insurance Contracts Act. Existing subsections 39A(1) and (2), which provide that subsection 33C(5) of the Insurance Contracts Act is a prescribed offence subject to an infringement notice, is now reflected in new paragraph 39A(1)(a). This amendment does not alter the substance of the existing provision.

New paragraph 39A(1)(b) provides that subsection 33H(1) of the Insurance Contracts Act is a prescribed offence subject to an infringement notice under the Insurance Contracts Act. Subsection 33H(1) of the Insurance Contracts Act provides that an insurer commits a strict liability offence for contravention of the ban.

New subsection 39A(2) provides that subsection 33H(2) is a prescribed civil penalty subject to an infringement notice under the Insurance Contracts Act. Subsection 33H(2) of the Insurance Contracts Act provides that an insurer is subject to a civil penalty for contravention of the ban.

The amendments made by Item 3 to Part 4A ensure that both the offence and civil penalty provisions relating to contravention of the ban are subject to the infringement notice scheme under the Insurance Contracts Act. This is appropriate as it will provide ASIC with an additional, proportionate regulatory tool to deter and address non-compliance with the ban. The availability of a range of enforcement mechanisms supports effective compliance and enforcement, promotes confidence for individuals and the community, and helps ensure the integrity of the ban.

Further, as only insurers are subject to the offence and civil penalty provisions for contravention of the ban, and insurers are typically body corporates, the infringement notice scheme in relation to subsections 33H(1) and (2) of the Insurance Contracts Act will, in practice, only apply to body corporates.

Under the infringement notice scheme in the Insurance Contracts Act, a penalty amount for an infringement notice issued under an offence provision is 50 per cent of the maximum penalty for the prescribed offence, while the penalty amount for an infringement notice issued under a civil penalty provision is 12 penalty units for individuals and 60 units for body corporates.

The *Australian Government Guide to Commonwealth Offences* (the Guide) suggests an appropriate penalty amount under an infringement notice is generally 20 per cent of the maximum financial penalty for the primary offence but recognises that departures from this

benchmark may be appropriate where necessary to ensure effective deterrence. In this case, a higher penalty is appropriate given the corporate and financial nature of the conduct. An infringement notice penalty set at 50 per cent strikes an appropriate balance between providing an adequate deterrent from misconduct and a quick and efficient mechanism to avoid the time and cost of litigation, and ensuring payments of penalties under infringement notices do not simply become a cost of doing business.

The infringement notice penalty for civil penalty provisions in the Insurance Contracts Act is consistent with the *Australian Government Guide to Commonwealth Offences*.

Item [4] – In the appropriate position in Part 5

Item 4 inserts section 43 into Part 5 to deal with the application of amendments made by the Regulations.

Subsection 43(1) provides that, despite the repeal and substitution of section 39A by Item 3, a contravention of subsection 33C(5) of the Insurance Contracts Act remains a prescribed offence for the purposes of paragraph 75X of the Insurance Contracts Act, whether the conduct constituting the offence occurred before, on or after the commencement of the Regulations. This ensures continuity of the operation of the infringement notice regime in respect of subsection 33C(5) of the Insurance Contracts Act, notwithstanding the repeal and substitution of section 39A.

Subsection 43(2) provides that the validity of an infringement notice issued before the commencement of the Regulations remains unaffected. This ensures that infringement notices issued prior to commencement remain valid and enforceable despite the amendments made by the Regulations.