



**Australian
Privacy
Foundation**

<http://privacy.org.au>

Secretary@privacy.org.au

<https://privacy.org.au/about/contacts/>

24 April 2021

Prof. Brian P. Schmidt AC FAA FRS
The Vice-Chancellor
Australian National University
vice-chancellor@anu.edu.au

Dear Professor Schmidt

Re: Formal Complaint re ANU's Background Checking Policy and Practice

The Australian Privacy Foundation (APF) is the country's leading privacy advocacy organisation. A brief backgrounder is attached.

I refer to a document, dated 3 March 2021, which has just come to our attention:

Procedure: Background checking, at https://policies.anu.edu.au/ppl/document/ANUP_6311242

This is a complaint about multiple aspects of your institution's policies and practices, as declared in that document.

Access to personal data has to be justified, and not by mere assertion but on the basis of the demonstrable benefits that exceed the harm to privacy arising from that access. The balance needs to reflect the sensitivity of the data, to the person concerned, in the particular context. Some of the checks declared in the document would appear to be reasonably justifiable, although there is concern about any blanket assumptions about data's relevance. On the other hand, the justification for some of these checks is anything but obvious, and is the subject of this complaint.

Further, the mere fact of declaring that the data is collected has a chilling effect on behaviour. Its actual collection has even greater impact, and its use greater impact again. Those impacts are abuses of the behavioural privacy of your employees, applicants, and individuals who would have been applicants had they not known in advance of the forbidding nature of your assertion that you impose tight surveillance on your employees before and during their employment.

This is all the more remarkable given the nature of your institution. Researchers and educators, and arguably many others among your staff-members, are expected to be fearless in their pursuit of knowledge. Some of that knowledge is inconvenient to economic, social and political institutions, including their employer and their employer's business partners. The ANU's declared procedures are in direct conflict with its function as the nation's leading university.

To assist in particularising this complaint, the APF requests your responses to the questions on the attachment to this letter. Thank you for your consideration.

Yours sincerely

Roger Clarke
Secretary, for the Board of the Australian Privacy Foundation
(02) 6288 6916 Roger.Clarke@privacy.org.au

Questions regarding the ANU Procedure: Background Checking

1. Criminal Record Check

- 1a. Would you please advise the legal basis on which you demand a Criminal Record Check in respect of all staff-members.
- 1b. Would you please advise on what basis you claim this is justified, despite being a clear breach of the expectations of the public, and an apparent breach of the provisions of the Privacy Act.
- 1c. Would you please advise what categories of information are disclosed to the ANU on the documents that you receive.
- 1d. Would you please advise what relevance those categories of information have to the decisions you make.

2. Retrospective Media Checking

- 2a. Would you please advise the legal basis on which you conduct "an investigation into an applicant's ... social media ... and other publicly available information".
- 2b. Would you please advise on what basis you claim this is justified, despite being a clear breach of the expectations of the public, and an apparent breach of the provisions of the Privacy Act.
- 2c. Would you please advise what categories of information are disclosed to the ANU on the documents that you receive.
- 2d. Would you please advise what relevance those categories of information have to the decisions you make.

3. Anti-Money Laundering Checking

- 3a. Would you please advise the legal basis on which you "confirm the identity of a person across multiple databases including electoral rolls, driver licence registers and Medicare cards".
- 3b. Would you please advise on what basis you claim this is justified, despite being a clear breach of the expectations of the public, and an apparent breach of the provisions of the Privacy Act.
- 3c. Would you please advise what categories of information are disclosed to the ANU on the documents that you receive.
- 3d. Would you please advise what relevance those categories of information have to the decisions you make.

4. Working with Vulnerable People Checks

- 4a. Would you please advise the legal basis on which you demand such a check in respect of all staff-members, whether or not their work entails working with vulnerable people.
- 4b. Would you please advise on what basis you claim this is justified, despite being a clear breach of the expectations of the public, and an apparent breach of the provisions of the Privacy Act.
- 4c. Would you please advise what categories of information are disclosed to the ANU on the documents that you receive.
- 4d. Would you please advise what relevance those categories of information have to the decisions you make.

5. Checks for Current Staff

- 5a. Would you please advise the legal basis on which you demand re-checks of every category of background check in respect of all staff-members.
- 5b. Would you please advise on what basis you claim this is justified, despite being a clear breach of the expectations of the public, and an apparent breach of the provisions of the Privacy Act.
- 5c. Would you please advise the frequency with which you undertake such re-checking.
- 5d. Would you please advise what relevance those categories of information have to the decisions you make.

Australian Privacy Foundation

Background Information

The Australian Privacy Foundation (APF) is the primary national association dedicated to protecting the privacy rights of Australians. The Foundation aims to focus public attention on emerging issues that pose a threat to the freedom and privacy of Australians. The Foundation has led the fight to defend the right of individuals to control their personal information and to be free of excessive intrusions.

The APF's primary activity is analysis of the privacy impact of systems and proposals for new systems. It makes frequent submissions to parliamentary committees and government agencies. It publishes information on privacy laws and privacy issues. It provides continual background briefings to the media on privacy-related matters.

Where possible, the APF cooperates with and supports privacy oversight agencies, but it is entirely independent of the agencies that administer privacy legislation, and regrettably often finds it necessary to be critical of their performance.

When necessary, the APF conducts campaigns for or against specific proposals. It works with civil liberties councils, consumer organisations, professional associations and other community groups as appropriate to the circumstances. The Privacy Foundation is also an active participant in Privacy International, the world-wide privacy protection network.

The APF is open to membership by individuals and organisations who support the APF's Objects. Funding that is provided by members and donors is used to run the Foundation and to support its activities including research, campaigns and awards events.

The APF does not claim any right to formally represent the public as a whole, nor to formally represent any particular population segment, and it accordingly makes no public declarations about its membership-base. The APF's contributions to policy are based on the expertise of the members of its Board, Committees and Reference Groups, and its impact reflects the quality of the evidence, analysis and arguments that its contributions contain.

The APF's Board, Committees and Reference Groups comprise professionals who bring to their work deep experience in privacy, information technology and the law.

The Board is supported by Patrons The Hon Michael Kirby and Elizabeth Evatt, and an Advisory Panel of eminent citizens, including former judges, former Ministers of the Crown, and a former Prime Minister.

The following pages provide access to information about the APF:

- Policy Statements <https://privacy.org.au/policies/>
- Policy Submissions <https://privacy.org.au/publications/by-date/>
- Media Releases <https://privacy.org.au/media-release-archive/>
- Current Board Members <https://privacy.org.au/about/contacts/>
- Patrons and Advisory Panel <https://privacy.org.au/about/contacts/advisorypanel/>

The following pages provide outlines of several campaigns the APF has conducted:

- The Australia Card (1985-87) <https://privacy.org.au/about/history/formation/>
- Credit Reporting (1988-90) <https://privacy.org.au/campaigns/consumer-credit-reporting/>
- The Access Card (2006-07) <https://privacy.org.au/campaigns/id-cards/hsac/>
- The Media (2007-) <https://privacy.org.au/campaigns/privacy-media/>
- My Health Record (2010-20) <https://privacy.org.au/campaigns/myhr/>