



**Australian
Privacy
Foundation**

<http://www.privacy.org.au>

Secretary@privacy.org.au

<http://www.privacy.org.au/About/Contacts.html>

7 February 2012

Mr Justin Fromm
Senior Policy Officer
Association of Mining and Exploration Companies Inc.
6 Ord Street
West Perth WA 6005

Dear Justin

Re: Drug and Alcohol Testing

Thank you for the invitation of 11 January. My apologies for the long delay in responding.

In principle, APF would be pleased to work with you on this. But, unfortunately, no Board or SubCommittee member with appropriate background are Perth-based, so travel would be involved.

We note that, as long ago as 1992, the then NSW Privacy Committee concluded that "unless specifically authorised by legislation, workplace [substance abuse] testing should only take place when:

- i) a person's impairment by [a substance] would pose a substantial and demonstrable safety risk to that person or to other people; and
- ii) there is reasonable cause to believe that the person to be tested may be impaired by [a substance]; and
- iii) the form of [substance abuse] testing to be used is capable of identifying the presence of a [substance] at concentrations which may be capable of causing impairment".

See: http://www.lawlink.nsw.gov.au/Lawlink/privacynsw/ll_pnsw.nsf

I attach a brief expression of the key principles the APF applies.

There have been some incredible claims made by proponents of testing, such as Medvet's statement that saliva and tongue-wipe testing are "non intrusive". The APF's view is that the 20-year delay in the imposition of appropriate regulatory measures cannot continue.

Yours sincerely

Roger Clarke
Chair, for the Board of the Australian Privacy Foundation
(02) 6288 1472 Chair@privacy.org.au

Australian Privacy Foundation
Substance Abuse Testing and the Workplace

The Key Principles

- Intrusions into physical privacy are very serious privacy invasions
- Interferences with human behaviour are very serious privacy invasions
- Interferences that extend beyond the workplace itself are even more serious
- Employers have no business performing law enforcement roles
- No proposed intrusion into physical privacy or social behaviour should ever proceed unless the following pre-conditions are fulfilled:
 - a privacy impact assessment (PIA) is undertaken in advance of the decision
 - the PIA process includes consultation with representatives of and advocates for the categories of affected people
 - very substantial and very specific justification is demonstrated to exist
 - the justification is exposed in advance as part of the consultative process so that it can be subjected to examination and challenge
 - the intrusion is proportionate to the need
 - all privacy intrusions that are found to be justified are the subject of mitigating measures to reduce their negative impacts
- All actions taken as a result of the procedures must be required to be:
 - justified
 - proportionate
 - subject to controls, challenge, review and audit

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, SubCommittees and Reference Groups, and its impact reflects the quality of the evidence, analysis and arguments that its contributions contain.

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

The Board is supported by a Patron (until recently, Sir Zelman Cowen), 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:

- Policies <http://www.privacy.org.au/Papers/>
- Resources <http://www.privacy.org.au/Resources/>
- Media <http://www.privacy.org.au/Media/>
- Current Board Members <http://www.privacy.org.au/About/Contacts.html>
- Patron and Advisory Panel <http://www.privacy.org.au/About/AdvisoryPanel.html>

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

- The Australia Card (1985-87) <http://www.privacy.org.au/About/Formation.html>
- Credit Reporting (1988-90) <http://www.privacy.org.au/Campaigns/CreditRpting/>
- The Access Card (2006-07) http://www.privacy.org.au/Campaigns/ID_cards/HSAC.html
- The Media (2007-) <http://www.privacy.org.au/Campaigns/Media/>