

Mr Tom Duncan
Clerk of the Legislative Assembly
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Dear Mr Duncan 

Early childhood education and care incident records—Order to table

I write to advise that I am making limited claims of privilege over some of the documents provided by the ACT Head of Service in accordance with the Early Childhood Education and Care (ECEC) Incident Records Order to Table.

On 24 June 2025, the Legislative Assembly passed a resolution under Standing Order 213A of the *Standing orders and continuing resolutions of the Legislative Assembly for the Australian Capital Territory* (Standing Orders) ordering that documents related to early childhood education and care incident records be tabled in the Legislative Assembly with permitted redactions (the resolution).

On 18 September 2025, the Legislative Assembly resolved that a request to vary the terms of the order be agreed under Standing Order 213B to, amongst other things, exclude the following information as being out of scope:

- Children's Education and Care Assurance (CECA) correspondence with complainants;
- Child enrolment records;
- Attendance records;
- Evidence or statements of facts from ACT Policing;
- Family Violence or Family Court Orders;
- Provider Internal Investigation Documents;
- Provider Policy/Procedures;
- Internal Incident/Injury/Illness Records;

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- Supervision Plans, medical management plans, and behaviour support plans;
- Witness Statements;
- Documents related to child protection reports; and
- Documents relating to open investigations (either by CECA or ACT Policing),

The resolution permitted targeted redaction of individuals' names, birthdates and contact details which has resulted in redactions to all but three of the 2,454 documents.

The redactions have been labelled using the following keys:

- P01 names
- P02 birthdates
- P03 contact details (i.e. emails, telephone and residential addresses)
- P04 images, video, audio
- P05 privilege personal privacy

However, the above keys could not be applied to the 967 documents produced under (2)(a)(i)-(iv) of the resolution as at the time the Education Directorate was using Adobe software. The Education Directorate subsequently gained access to Objective Redact software which allowed for labelled redactions to 1,465 documents under (2)(a)(v) of the resolution and 20 of 22 documents under (2)(b) of the resolution.

As required under Standing Order 213A, the return has been prepared including two Schedules of documents, which includes for each document the reasons for the claim of privilege. This statement is to be read in conjunction with the Schedules included with the return.

The return identified 2,454 documents as within the scope of the resolution. A claim of privilege is made over 2 documents on the basis that their release could prejudice legal proceedings. A partial claim of privilege is made in respect of 207 documents, where targeted redactions have been made on the ground that it is not in the public interest that the redacted information be released as it would unreasonably provide potentially identifiable information about individuals.

It should be observed that redactions labelled P01-P03 (personal information) are permitted redactions under the resolution, and a public interest claim is not required for those redactions. That should not be contentious. I suggest that the targeted redactions to the 207 documents which could result in the identification of an individual ('identifying information') should likewise not be contentious, as those redactions appear to be in keeping with the intent of the Legislative Assembly in permitting the targeted redaction of other identifying information (names, birthdates, contact details) to avoid unreasonable disclosure of personal information.

The ACT Public Service has taken a prudent approach to redactions to prevent the unreasonable disclosure of personal information and to ensure the accessibility of the documents to the Legislative Assembly. As explained above, the identifying information redactions are targeted and have not been labelled but should be clear on their face for 25 of 967 documents under (2)(a)(i)-(iv) and have been labelled as "P05" for the remaining 182 of 1465 documents under (2)(a)(v) of the resolution. There are no partial privilege redactions/claims for public interest reasons over the 22 briefs under (2)(b) of the resolution.

Unreasonable disclosure of personal information

It has long been recognised that there is information held by government that it would not be in the public interest to release. The ACT Public Service has applied targeted redactions to 'identifying information' which is reasonably likely to identify the subject of the information, including by staff employed by the service provider, by parents and carers and other families that attend the service.

The ACT Public Service has given careful consideration to:

- the nature and amount of information in each document;
- the fact the document is to be tabled in and published by, the Legislative Assembly;
- the other information that is available, and the practicability of using that information to identify an individual.

The nature and amount of information in each document includes:

- medical diagnoses (for example, specific reference to diagnosed conditions such as Coeliac disease, Asperger syndrome, Attention Deficit Hyperactivity Disorder)
- diversity status (for example language spoken other than English)
- specific therapeutic interventions or support (for example, a behaviour management plan or abscondment/supervision plan for a child)
- specific employment information (for example, occupation of parent, qualification of an early childhood educator or other staff member and/or placement type).

Where a document has sufficient contextual information to enable identification of an individual, partial redactions have been applied to only that information. Importantly, these limited and targeted redactions would not have the effect of limiting debate about incidents at early childhood and education care facilities and the appropriateness of the regulator's response to those incidents.

Nor is the identification of individuals necessary to understand the full import of the document produced in response to the resolution. There is plainly a public interest in protecting the privacy of individuals from being unreasonably invaded, as reflected in the Legislative Assembly debate on 18 September 2025.

Risk of harm to children

Where an individual is identifiable, particularly when that person is a child, the risk of harm if the above types of information are released is very significant.

In some cases, it is a child that has allegedly undertaken the behaviour of concern. Children can display sexualised behaviours individually or towards other children as part of their normal development. Explorations consistent with healthy child development may be misunderstood as unhealthy or predatory.

Conversely, children who display unhealthy sexualised behaviours could be experiencing exposure to harm themselves. Children in this situation need support and behaviour management plans. In either circumstance it would be particularly harmful to a child's wellbeing if they were identified in these circumstances.

Information produced in response to an order made under Standing Order 213A is authorised for publication when presented to the Legislative Assembly. It becomes a permanent public record. As a consequence, the risk of identification of a child involved in an incident remains with that child for life. Once information becomes public, its distribution and use is unregulated. This creates risk of not just immediate harm to a child but ongoing risk of harm where they are identifiable to others — or their sensitive information is identifiable to them — in the documents published.

Risk of harm to others

The other people who are reasonably identifiable and for which partial redactions have been made are parents and education and care service workers. The nature of some of the limited redactions includes the individual's spoken language (other than English), specific details about their occupation, qualifications or current courses of study.

The workforce is predominantly female, with few services employing any more than one or two male educators, and as such those male educators are more easily identifiable requiring careful redactions to avoid an unreasonable disclosure of their personal information.

The identification of individual staff members is likely to damage the proactive culture of notification and cooperation that exists within the ACT's early childhood education and care sector.

Identification of individual staff members creates a risk of harm due to the potential for reprisals against employees who are still employed in an early childhood education and care facility. This is a concern that the Legislative Assembly has long recognised through s 297, *Education and Care Services National Law Act 2010* as applied under the *Education and Care Services National Law (ACT) Act 2011*, which provides for protection from reprisal for protected disclosures under the Act. Further, the identification of individual staff members may have broader ramifications for them in the early childhood education and care sector and the community more broadly.

Also, there is the potential for adverse responses from parents to educators who provided information or evidence that parents feel contradicts or is inconsistent with a parent's version of events. It is critical that educators who provide information or evidence to CECA are not discouraged from making those representations for fear of their employer or parents scrutinising information provided in confidence to CECA.

These factors inform the assessment of the significant risk that educators will be more hesitant to raise complaints and concerns with CECA if they fear their identities will become public knowledge.

Additionally, while early childhood education and care providers have [reporting obligations](#) under the National Law and Regulations, as well as the *Children and Young People Act 2008*, it is also important that those without legislative obligations are encouraged and feel safe to report — for example, parents, carers and other members of the community. Release of information that enables these individuals to be identified in their community could have a chilling effect on reporting culture. Damage to a proactive reporting culture would have an adverse impact on the safety, health and welfare of children attending ECEC services in the ACT.

Where notifications or allegations about an educator have not been substantiated, the impact of public disclosure of these matters on their reputation and employment prospects could be irreparable. The attraction and retention of early childhood educators is an ongoing challenge in all jurisdictions, and the ACT is no different. The identification of individuals in these documents would likely place more pressure on staffing levels.

Prejudice legal proceedings

The following documents 00967 and 00954 relate to a matter currently before the courts.

A claim of privilege is made in relation to the entirety of these documents as production could cause prejudice to those legal proceedings. Additionally, this ground of privilege is broadly consistent with the principles underpinning the sub judice convention in Continuing Resolution 10 of the Standing Orders which provides that active matters before the court 'shall not be referred to in any motion, debate or question'.

If any claims of privilege in this return are disputed, please take this letter as notification of my intent to make a further submission substantiating the claims. I ask that any request for submissions be copied to the Head of Service in addition to the Chief Minister.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Andrew Barr', with a stylized flourish at the end.

Andrew Barr MLA
Chief Minister

24 December 2025