

Andrew Barr MLA

Chief Minister

Minister for Economic Development

Minister for Tourism and Trade

Member for Kurrajong

Mr Tom Duncan
Clerk of the Legislative Assembly
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Dear Mr Duncan 

I write to provide further submissions on the claims of privilege relating to the 213A Standing Order to produce documents relating to climate change mitigation – documents and briefs to ministers.

On 25 September 2025, the Legislative Assembly passed a resolution under Standing Order 213A of the *Standing Order and Continuing Resolutions of the Legislative Assembly of the Australian Capital Territory* ordering documents related to climate change mitigation to be tabled.

On 31 October 2025, Ms Kathy Leigh, Head of Service, provided you with a return in response to the resolution under Standing Order 213A identified as “213A Schedule of Documents — 213A-2025-011– Climate Change Mitigation – Documents and Briefs to Minister” (the return).

The return identified 356 documents within scope of the 213A order. The Head of Service arranged for 194 documents, over which no claim of privilege was made, be provided to the Legislative Assembly through you. Privilege was claimed over the remaining 162 documents.

On 6 November 2025, Ms Nuttall MLA wrote to you disputing the privilege claims over 152 of the documents identified as privileged within the return. Ms Nuttall has requested consideration be given as to whether there are sections in each of the 142 documents identified below suitable for redaction, in order that the document not be withheld in its entirety:

- CED.1(a).10-11
- CED.1(d).028-83
- CED.1(d).111-112
- CED.1(h).002-006



- CED.1(j).033-040
- CED.1(k).042-043
- CED.1(k).045-111

Ms Nuttall has disputed the privilege claims over the entirety of the remaining 10 documents identified below:

- CED.1(d).095-099
- CED.1(d).105-107
- CED.1(h).010-011

Updates to claims of privilege

While care is taken to review documents ahead of the first return, the volume of material – more than 6,800 pages of documents in this case – means the level of assessment undertaken for documents must be balanced against the imperative of providing the documents within the timeframes set by the Legislative Assembly. Further and more detailed review undertaken in preparation of this submission has resulted in updates to some claims of privilege. For some documents, this has meant that a claim of privilege has been withdrawn. For other documents, additional claims of privilege have been made. In both cases, details of the reasons for claims of privilege are detailed both in this submission as well as in the Schedule.

In particular, based on further review and advice from officials, I agree to withdraw the claims of privilege over the following documents which have been enclosed for you to provide to the Legislative Assembly:

- CED.1(a).11
- CED.1(d) 29-35, 38-44, 48-54, 57-64, 66-107;
- CED1.(h) 2-6;
- CED1.(j) 33-40; and
- CED1.(k) 52, 54, 58, 64, 68, 71, 74, 77-79, 81, 87, 89, 91, 98-102, 104, 107.

Executive privilege

On 6 August 2025, I provided a submission supporting my claims of privilege grounded on the convention of the collective responsibility of Cabinet and Cabinet deliberations in the ACT Government Projects Business Cases review. I take this opportunity to provide additional information and evidence in support of this ground as it applies to the Cabinet submissions and business cases, including their constituent documents, identified in the attached Schedule. References below to Cabinet are taken to include the Expenditure Review Committee of Cabinet.

It is submitted that disclosure of the vast majority of Cabinet submissions and business cases would not be consistent with the basic constitutional principle regarding the separate roles of the executive and legislature. The Cabinet submissions and business cases identified in this return are not documents prepared simply for the assistance of Cabinet but rather, they offer both clues as to intra-Cabinet deliberations and reveal the position individual Ministers took to Cabinet.

A Cabinet submission is the individual Minister's position on a particular matter within Cabinet and upon which Cabinet deliberated and the submission is either supported, not supported, supported in part or sent back for further consideration. It is evidence, at least, of the individual Minister's contributions to Cabinet deliberations, the position they advocated for and the content that Cabinet discussed and deliberated upon before reaching its decision. There is no reason a Cabinet submission should not be considered akin to Cabinet notes in the sense that it is a record (although prepared in advance of Cabinet) of effectively the Minister's position upon which a subsequent Cabinet deliberation ensued. Of course, it is not possible to provide the arbiter and therefore the Legislative Assembly with direct evidence as to what was in the Cabinet submission to compare against the records of the internal Cabinet deliberation as that would be counterintuitive.

An example of the issue is demonstrated by a recent return where a business case was produced in response to an order to produce business cases for Light Rail (213A-2025-003:1029).¹ One business case revealed the Minister for Capital Metro at that time presented a position to Cabinet which recommended the initial stage of Light Rail be developed from Gungahlin to Russell rather than terminating in the City. The ultimate Cabinet decision shows that only the Gungahlin to City element would be developed. Plainly this undermines the doctrine of collective Cabinet responsibility as the revelation of the individual Minister's position reveals the Cabinet deliberations.

It remains critical that the separate roles of the executive and legislature be maintained. The disclosure of documents which evidence an individual Minister's position in Cabinet opens that Minister up to criticism and is not consistent with the doctrine of collective Cabinet responsibility.

There will be some information in both Cabinet submissions and business cases which is purely factual. Equally, there is a great deal of information in Cabinet submissions and business cases which reflects the Minister's position in Cabinet and which the Minister will use to attempt to gain the support of their colleagues in Cabinet on how to weigh and deliberate on the relative priorities of the ACT Executive/Cabinet with regard to a particular decision. This information therefore constitutes evidence of at least part of what is deliberated on by Cabinet.

Summaries of decisions of Cabinet are published in the ACT via the [Open Government Information website](#) or in the annual [Budget Papers and Statements](#). Release of Cabinet submissions would make available evidence of the deliberations of Cabinet by comparing the position submitted by an individual Minister with Cabinet's final decision or the Budget Papers and Statements as published. This is most apparent where the final decision of Cabinet is different to that proposed by the individual Minister. For example, the budget allocation recommended in a Business Case, when compared against budget allocation decided in the Budget Papers, directly reveals where Cabinet reached a decision contrary to that proposed by the individual Minister. That Minister is not afforded the protection of the collective responsibility of Cabinet where this information is revealed and their position in Cabinet is open to scrutiny by the Legislative Assembly as opposed to only the Cabinet decision itself being open to scrutiny.

¹ https://www.parliament.act.gov.au/__data/assets/pdf_file/0010/2864683/Light-Rail-0444-1-of-2-Capital-Metro-Full-Business-Case.pdf

To a lesser extent, the deliberations of Cabinet are also apparent when a Minister submits multiple Cabinet submissions over time on a matter for deliberation by Cabinet as in the form of a comeback to Cabinet with updated options or proposals addressing earlier deliberations during which Cabinet agreement was not reached. Reading and comparing such submissions would allow the reader to identify the specific changes made following each round of deliberation and therefore the matters of intra-Cabinet contention.

I submit as a general proposition that the revelation of Cabinet submissions and business cases in unredacted form cannot be said to be reasonably necessary for the Legislative Assembly to perform its accountability and inquiry functions as to do so would be in direct conflict with the doctrine of ministerial responsibility in its individual dimension (see *Chadwick* at [54]-[55] (Spigelman CJ)).

A Cabinet submission is not merely a submission for the assistance of Cabinet; it is the individual Minister's position going into Cabinet and is no less deliberative simply on the basis it has been reduced to writing prior to a Cabinet meeting. The Minister's position would evidently be reflected in some form in the Cabinet notes, which are plainly Cabinet records.

To assist the resolution of the disputed privilege claims, a more limited approach has been taken to Cabinet submissions and business cases to attempt to identify precise portions that would reveal an individual Minister's position in Cabinet. This approach, while it may be preferable, will not always be feasible and requires a diversion of resources to scrutinise the documents in detail, seek advice, and effect the relevant redactions.

Targeted redactions

Upon further review of the documents in preparation of this submission, and in accordance with the pathway forward suggested by Ms Nuttall in her dispute, targeted redactions to Cabinet submissions have been suggested. The purpose of the suggested redactions is to mitigate the risk of harm in releasing information that reveals the deliberations of Cabinet while allowing for release of information that does not.

Where targeted redactions are proposed, this is indicated in the attached Schedule of disputed documents. Versions of the disputed documents with targeted redactions proposed have also been provided to your office for the arbiter to evaluate and report on should they remain in dispute.

Information the release of which will harm business affairs

In preparing this submission, third party consultation was undertaken with businesses that produced several documents over which a claim of privilege has been disputed.

Consultation with the authors of these technical reports indicates a risk of harm to their business affairs should these reports be released in full on the grounds the documents contain intellectual property and financial information that the business advises will cause harm if released. Due to the timeframes set for preparing a response to Ms Nuttall's dispute, it has not been possible to assess these claims in detail, particularly given the length and complexity of the technical reports to which they relate. As such, should Ms Nuttall wish to dispute this claim as it relates to these documents, I welcome the opportunity for further review with the aim of reaching consensus on possible redactions that could address the harms identified
CED.1(k) 60, 62, 65, 66, 70, 80, 82-83, 84-85, 105-106.

Out of scope information

In some cases, information that is outside the scope of documents and information ordered by the Legislative Assembly is included as an attachment to a document that is in scope. Consistent with the approach adopted in other jurisdictions, including the Commonwealth Parliament, out of scope information has been redacted. Out of scope redactions are marked in the document as well as being listed in the Schedule. This includes the following documents: CED.1(d) 33-34, 42-43 and 98-99.

Dispute where no claim of privilege was made

Ms Nuttall's correspondence disputes privilege in relation to document CED.1(h).010. This appears to be an error, as no claim of privilege was made in relation to this document and it was included in the return provided to you.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Andrew Barr'.

Andrew Barr MLA
Chief Minister

14 November 2025