

Mr Mark Parton MLA
Speaker
ACT Legislative Assembly
Speaker@parliament.act.gov.au

Dear Mr ~~Speaker~~ **Mark**

I write in relation to the Assembly Order to produce documents relating to early childhood education and care (ECEC) under Standing Order 213A. The purpose of this letter is to request that the timeframe for the production of documents be extended and that the scope of the order be varied in accordance with Standing Order 213B.

On 24 June 2025 the ACT Legislative Assembly passed a resolution in accordance with Standing Order 213A requiring production of ECEC incident records from the past 5 years. The order to produce documents is due on 25 September.

The Education Directorate has expended significant time and resources into responding to the terms of the Order. A thorough document discovery process has identified that the order as currently framed has led to a large volume of documents that are irrelevant to the Assembly's intent in passing the motion.

Section 2 (a) of the order calls for all documents held by Children's Education and Care Assurance (CECA) and the ACT Ombudsman from the past five years containing:

- Emergency action notices, prohibition notices, suspension notices, compliance notices, show cause notices, or other notices or directions served on or regarding ECEC providers under the *Education and Care Services National Law (ACT) ACT 2011*;
- Written notices following an incident of decisions to cancel, suspend or continue approval of a service provider;
- Notifications to parents of children enrolled at an education and care service about the suspension or cancellation of provider approval;
- Documents relating to enforceable undertakings regarding early childhood education and care; and
- Documents relating to suspected, alleged or actual criminal conduct, or risk of significant harm incidents.

A request is made to vary the scope of Section 2(a) above. However, no variation of scope is sought for Sections 2 (b).

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Each incident or matter referred to in section 2 (a) typically includes a number of formal documents such as a notification, show cause notice, and outcome documented in the form of a decision or compliance action. These documents contain the facts of the matter, relevant considerations, and actions taken by the regulator, which are responsive to the Assembly's intent. However, these documents may also contain multiple attachments which are largely irrelevant to the intent of the resolution and many would require a claim of privilege to be made due to highly sensitive nature of the information relied on by the regulator, and in some cases ACT Policing, as part of an investigation. These documents can include family violence orders, child protection reports, information from ACT Policing, and protected witness statements, through to individual child enrolment and attendance records, medical and behavioural support plans, and service provider policies and procedures.

The discovery process has identified around 2,000 (of 3,300) documents of this nature in sections 2 (a) (i-iv), with 16,000 documents discovered in section 2 (a) (v) which have yet to be reviewed and categorised. The Education Directorate has advised that it will not be possible to complete the review and redaction of these documents by 25 September 2025.

In addition, the discovery of documents has identified a particular concern regarding release of information relating to open investigations. These matters are currently at various stages of evidence gathering and law enforcement investigations and/or legal proceedings may be prejudiced if information was released publicly. Release of information relating to open investigations also threatens natural justice and rights of response processes, which are critical to an effective and fair regulatory scheme.

I therefore call on the Assembly to amend the current order to explicitly include the following formal document types which collectively meet the intentions of the original motion:

- Emergency Action Notices
- Prohibition Notices (including written decision letters)
- Compliance Notices (including written decision letters)
- Show Cause Notices
- Other Notices and Directions (including administrative letters and caution letters)
- Suspension Notices (including voluntary suspensions)
- Cancellation Notices
- Approval to Continue Notices
- Notices to Parents
- Enforceable Undertakings.

Should this variation in scope be agreed, the following document types will be excluded from the documents produced through this order:

- 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
- Supervision Plans, medical management plans, and behaviour support plans
- Witness statements
- Documents related to child protection reports

In addition, I call on the Assembly to amend the order to explicitly exclude documents relating to open investigations (either by CECA or ACT Policing) on the grounds that public release may prejudice ongoing evidence gathering critical to keeping children safe. Given the intent of the order is to promote children's safety in ECECs, I contend that the inclusion of this information for public release is not in line with the intent of the original motion and should therefore be removed as irrelevant to that original intent.

Further, due to the large volume of documents remaining to be reviewed, I request the Assembly agree to extend the timeframe for the production of documents. The extension of time required is dependent on the Assembly's agreement to reduce the scope of this order. Should the reduction be agreed it is requested an additional 3 months be provided to complete the review and redaction process. Without the requested reduction of scope an additional 7 months will be required.

It is relevant to note that this order has required the diversion of a significant number of public servants with 18-20 FTE currently working through the extensive volume of documents at a cost of \$74,000 per fortnight, in addition to significant senior executive support. A full costing exercise will be undertaken on completion of the order.

The ACT Government is committed to keeping children safe. I ask the Assembly to put children first when considering these requests. By reducing the scope to those documents relevant to the Assembly's interests, we can divert staff back to the important roles they play in our public service everyday as quickly as possible - supporting our community and taking care of our children.

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

17 September 2025