

Mr Tom Duncan
Clerk of the Legislative Assembly
GPO Box 1020
CANBERRA ACT 2601
Tom.Duncan@parliament.act.gov.au

Dear Mr Duncan

I write regarding the Legislative Assembly order to produce documents relating to early childhood education and care (the order) under Standing Order 213A of the *Standing Orders and continuing resolutions of the Legislative Assembly for the Australian Capital Territory* (Standing Orders). The purpose of this letter is to respond to the issues raised by Mr Emerson MLA in his correspondence to you and subsequently circulated to all Members disputing claims of privileged dated 27 January 2026.

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

The order was varied on 18 September 2025 by the Legislative Assembly under Standing Order 213B to, amongst other things, exclude the following document types from being produced through the order:

- 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
- supervision plans, medical management plans, and behaviour support plans
- witness statements
- documents related to child protection reports

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- documents relating to open investigations (either by CECA or ACT Policing).

In compliance with the order, the government returned the relevant documents on 24 December 2025.

In his correspondence of 27 January 2026, Mr Emerson seeks to dispute claims of privilege pursuant to Standing Order 213A(g). This appears to be a typographical error, and my response is prepared on the basis that Mr Emerson has sought to dispute claims of privilege pursuant to Standing Order 213A(j).

Mr Emerson's correspondence indicates that no dispute is being raised in relation to targeted redactions of names, dates of birth or contact details, or other information that may reasonably be expected to identify a person, such as a person's medical condition or diversity status.

The document list provided by Mr Emerson has been captured in the table provided with this letter.

Redactions made to excerpts of documents excluded from production under the order

The Assembly resolved, on 18 September 2025, that witness statements are excluded from the scope of the order. The debate in the Assembly on 18 September 2025 specifically raised the example of witness statements and concern with the production of these documents. As a consequence, the order for production, as varied on 18 September 2025, specifically excluded witness statements and other evidentiary material relating to incidents, investigations and regulatory compliance.

Whilst Mr Emerson does not dispute targeted redactions for personal and medical information (as permitted by the order for production), he claims that the Assembly's resolution excluded certain categories of documents but did not exclude excerpts of those documents (where they appear in other returnable documents).

A *direct* excerpt of a witness statement is patently still a witness statement. Accordingly, in compliance with the decision of the Assembly on 18 September 2025, direct excerpts of witness statements were excluded from the return by way of redaction and notification that the information is out of scope.

As indicated in Attachment A, 193 of the disputed documents had redactions of excerpts of witness statements. No privilege was claimed in relation to these redactions.

The table provided at Attachment A also identifies 34 disputed documents with redactions of excerpts of first-hand accounts of events that were not explicitly referred to as 'witness statements'. These redactions have been reviewed and, however they have been described in the document in which they appear, they are contemporaneous evidence which is substantively equivalent to a witness statement. I also note that provider internal investigation documents and documents relating to open investigations were excluded from the scope of the order by the Assembly on 18 September 2025. Where returned documents contain direct excerpts of out-of-scope document types, those excerpts have appropriately been treated as out of scope of the order. No privilege was claimed in relation to these redactions.

As no privilege claim has been made in relation to the redactions that Mr Emerson's correspondence disagrees with, the conditions for Standing Order 213A(j) to be enlivened are not present. It is not for the Executive or a Member to vary the terms of the motion passed by the Assembly. Rather, the scope of the documents that must be produced is exclusively a matter for the Assembly.

Accordingly, there is no dispute for the Independent Legal Arbiter to evaluate in relation to these documents.

Documents 00954 and 00967 over which privilege claim made in full

Mr Emerson has disputed the claim of privilege made in relation to these two documents. Further advice has been sought to inform my claim of privilege. Based on this further advice, I confirm that I withdraw my claim of privilege in relation to documents 00954 and 00967. The Head of Service will provide these documents to your office electronically and in hard copy. Assembly permitted targeted redactions of personal information have been made.

With the resolution of these issues, there remain no outstanding matters that could require or attract the appointment of the Independent Legal Arbiter.

With my thanks for your assistance in this matter.

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

20 February 2026

Encl – list of disputed documents

List of disputed documents

Document Number	Document type	Out-of-scope redaction includes witness statement redactions	Out-of-scope redaction is witness statement only
610	Show Cause Notice	Yes	Yes
723	Show Cause Notice	Yes	Yes
724	Show Cause Notice	Yes	Yes
725	Show Cause Notice	Yes	Yes
726	Show Cause Notice	Yes	Yes
727	Show Cause Notice	Yes	Yes
728	Show Cause Notice	Yes	Yes
729	Show Cause Notice	Yes	Yes
730	Show Cause Notice	Yes	Yes
731	Show Cause Notice	Yes	Yes
732	Show Cause Notice	Yes	Yes
734	Show Cause Notice	Yes	Yes
737	Show Cause Notice	Yes	Yes
738	Show Cause Notice	Yes	Yes
739	Show Cause Notice	Yes	Yes
743	Show Cause Notice	Yes	Yes
900	Show Cause Notice	Yes	Yes
902	Show Cause Notice	Yes	Yes
905	Show Cause Notice	Yes	Yes
911	Show Cause Notice	Yes	Yes
931	Show Cause Notice	Yes	Yes
967	<i>Caveat Brief</i>	N/A	N/A
954	<i>Caveat Brief</i>	N/A	N/A
969	Show Cause Notice	Yes	No
976	Show Cause Notice	Yes	Yes
978	Show Cause Notice	Yes	Yes
979	Show Cause Notice	Yes	Yes
980	Show Cause Notice	Yes	Yes
984	Show Cause Notice	Yes	Yes
989	Show Cause Notice	Yes	Yes
992	Show Cause Notice	Yes	Yes
993	Show Cause Notice	Yes	Yes
994	Show Cause Notice	Yes	Yes
996	Show Cause Notice	Yes	Yes
1008	Show Cause Notice	Yes	No
1009	Show Cause Notice	Yes	No
1010	Show Cause Notice	Yes	Yes
1011	Show Cause Notice	Yes	No
1017	Show Cause Notice	Yes	No
1025	Show Cause Notice	Yes	No
1026	Show Cause Notice	Yes	Yes
1031	Show Cause Notice	No	No
1032	Show Cause Notice	No	No
1042	Show Cause Notice	Yes	Yes
1043	Show Cause Notice	Yes	Yes

1052	Show Cause Notice	Yes	Yes
1065	Show Cause Notice	Yes	Yes
1066	Show Cause Notice	Yes	Yes
1067	Show Cause Notice	Yes	Yes
1070	Show Cause Notice	Yes	Yes
1071	Show Cause Notice	Yes	Yes
1083	Show Cause Notice	Yes	Yes
1084	Show Cause Notice	Yes	Yes
1093	Show Cause Notice	Yes	Yes
1094	Show Cause Notice	Yes	Yes
1095	Show Cause Notice	Yes	Yes
1098	Show Cause Notice	Yes	Yes
1108	Show Cause Notice	Yes	Yes
1109	Show Cause Notice	Yes	Yes
1110	Show Cause Notice	Yes	Yes
1111	Show Cause Notice	Yes	Yes
1113	Show Cause Notice	Yes	Yes
1119	Show Cause Notice	Yes	No
1125	Show Cause Notice	Yes	No
1126	Show Cause Notice	Yes	No
1127	Show Cause Notice	Yes	Yes
1135	Show Cause Notice	Yes	No
1136	Show Cause Notice	Yes	No
1137	Show Cause Notice	Yes	Yes
1138	Show Cause Notice	Yes	No
1151	Show Cause Notice	Yes	Yes
1152	Show Cause Notice	Yes	Yes
1153	Show Cause Notice	Yes	Yes
1157	Show Cause Notice	Yes	Yes
1158	Show Cause Notice	Yes	No
1186	Show Cause Notice	Yes	Yes
1197	Show Cause Notice	Yes	No
1200	Show Cause Notice	Yes	Yes
1209	Show Cause Notice	Yes	No
1210	Show Cause Notice	Yes	No
1216	Show Cause Notice	Yes	No
1228	Show Cause Notice	Yes	Yes
1229	Show Cause Notice	Yes	Yes
1230	Show Cause Notice	Yes	Yes
1239	Show Cause Notice	Yes	Yes
1240	Show Cause Notice	Yes	Yes
1245	Show Cause Notice	Yes	No
1246	Show Cause Notice	Yes	No
1247	Show Cause Notice	Yes	No
1248	Show Cause Notice	Yes	Yes
1249	Show Cause Notice	Yes	Yes
1250	Show Cause Notice	Yes	Yes
1261	Show Cause Notice	Yes	Yes
1262	Show Cause Notice	Yes	Yes

1265	Show Cause Notice	Yes	Yes
1269	Show Cause Notice	Yes	Yes
1270	Show Cause Notice	Yes	Yes
1274	Show Cause Notice	Yes	Yes
1284	Show Cause Notice	Yes	Yes
1285	Show Cause Notice	Yes	Yes
1287	Show Cause Notice	Yes	Yes
1320	Show Cause Notice	Yes	Yes
1330	Show Cause Notice	Yes	Yes
1331	Show Cause Notice	Yes	Yes
1332	Show Cause Notice	Yes	Yes
1339	Show Cause Notice	Yes	Yes
1340	Show Cause Notice	Yes	Yes
1341	Show Cause Notice	Yes	Yes
1349	Show Cause Notice	Yes	Yes
1351	Show Cause Notice	Yes	Yes
1363	Show Cause Notice	Yes	Yes
1370	Show Cause Notice	Yes	No
1375	Show Cause Notice	Yes	Yes
1376	Show Cause Notice	Yes	Yes
1377	Show Cause Notice	Yes	Yes
1392	Show Cause Notice	Yes	Yes
1393	Show Cause Notice	Yes	Yes
1436	Show Cause Notice	Yes	Yes
1487	Show Cause Notice	Yes	Yes
1494	Show Cause Notice	Yes	Yes
1495	Show Cause Notice	Yes	Yes
1513	Show Cause Notice	Yes	Yes
1529	Show Cause Notice	Yes	Yes
1538	Show Cause Notice	Yes	No
1541	Show Cause Notice	Yes	Yes
1542	Show Cause Notice	Yes	Yes
1545	Show Cause Notice	Yes	Yes
1546	Show Cause Notice	Yes	Yes
1547	Show Cause Notice	Yes	Yes
1554	Show Cause Notice	Yes	Yes
1570	Show Cause Notice	Yes	Yes
1592	<i>Document number does not exist</i>	<i>N/A</i>	<i>N/A</i>
1664	Show Cause Notice	Yes	Yes
1670	Show Cause Notice	Yes	No
1671	Show Cause Notice	Yes	No
1672	Show Cause Notice	Yes	No
1673	Show Cause Notice	Yes	Yes
1674	Show Cause Notice	Yes	Yes
1675	Show Cause Notice	Yes	Yes
1683	Show Cause Notice	Yes	Yes
1685	Show Cause Notice	Yes	Yes
1690	Show Cause Notice	Yes	Yes

1691	Show Cause Notice	Yes	Yes
1698	Show Cause Notice	Yes	Yes
1699	Show Cause Notice	Yes	Yes
1700	Show Cause Notice	Yes	Yes
1704	Show Cause Notice	Yes	Yes
1818	Show Cause Notice	Yes	Yes
1824	Show Cause Notice	Yes	Yes
1825	Show Cause Notice	Yes	Yes
1829	Show Cause Notice	Yes	Yes
1831	Show Cause Notice	Yes	Yes
1832	Show Cause Notice	Yes	Yes
1844	Show Cause Notice	Yes	Yes
1845	Show Cause Notice	Yes	Yes
1853	Show Cause Notice	Yes	Yes
1854	Show Cause Notice	Yes	Yes
1855	Show Cause Notice	Yes	Yes
1861	Show Cause Notice	Yes	Yes
1870	Show Cause Notice	Yes	Yes
1871	Show Cause Notice	Yes	Yes
1872	Show Cause Notice	Yes	No
1878	Show Cause Notice	Yes	Yes
1879	Show Cause Notice	Yes	Yes
1882	Show Cause Notice	Yes	Yes
1887	Show Cause Notice	Yes	No
1888	Show Cause Notice	Yes	Yes
1889	Show Cause Notice	Yes	No
1890	Show Cause Notice	Yes	Yes
1899	Show Cause Notice	Yes	No
1906	Show Cause Notice	Yes	Yes
1907	Show Cause Notice	Yes	Yes
1909	Show Cause Notice	Yes	Yes
1911	Show Cause Notice	Yes	No
1912	Show Cause Notice	Yes	No
1913	Show Cause Notice	Yes	Yes
1917	Show Cause Notice	Yes	Yes
1918	Show Cause Notice	Yes	Yes
1925	Show Cause Notice	Yes	Yes
1935	Show Cause Notice	Yes	Yes
2119	Show Cause Notice	Yes	Yes
2122	Show Cause Notice	Yes	Yes
2123	Show Cause Notice	Yes	Yes
2272	Show Cause Notice	Yes	Yes
2278	Show Cause Notice	Yes	Yes
2284	Show Cause Notice	Yes	Yes
2285	Show Cause Notice	Yes	Yes
2431	Show Cause Notice	Yes	Yes
00695A	Show Cause Notice	Yes	Yes
00696A	Show Cause Notice	Yes	Yes
00701A	Show Cause Notice	Yes	Yes

00935A	Show Cause Notice	Yes	Yes
00937A	Show Cause Notice	Yes	Yes
00938A	Show Cause Notice	Yes	Yes
00939H	Show Cause Notice	Yes	Yes
00944G	Show Cause Notice	Yes	Yes
00945H	Show Cause Notice	Yes	No
01366A	Show Cause Notice	Yes	Yes