

**33 SUSPENSION OF STANDING AND SESSIONAL ORDERS**

On the President calling on the Clerk to read the order of the day, Ms Boyd moved, according to contingent notice: That standing and sessional orders be suspended to allow a motion to be moved forthwith for censure of the Leader of the Government for failing to table documents in accordance with an order of the House.

Debate ensued.

Question put and passed.

**34 CENSURE OF LEADER OF THE GOVERNMENT—NON-COMPLIANCE WITH AN ORDER FOR PAPERS**

Ms Boyd moved, without notice:

- (1) That this House notes that:
  - (a) on 13 November 2024 this House ordered the production of documents relating to the early childhood education and care sector,
  - (b) despite agreement with the mover of the motion, Ms Boyd, over amendments to the notice to reduce the timeframe for documents by one year, extend the due date of the return by 7 days, and vary the scope of paragraph (k) of the order, the Government voted against the motion,
  - (c) on 21 November 2024 a request was received under standing order 53 to vary the scope of the order for papers, which was not agreed to by Ms Boyd,
  - (d) on three separate occasions between 21 November and 17 December 2024, Ms Boyd met with representatives from the Deputy Premier's office and the Department of Education in relation to the scope of the order and potential variations, however no further request to vary the scope of the order was received,
  - (e) in response to the order, on 11 December 2024 an initial return was received from The Cabinet Office which:
    - (i) noted the large number of documents captured by the order,
    - (ii) detailed discussion with Ms Boyd concerning interpretation of the scope of the order by ministers and agencies, the creation of documents in order to provide summary data, and the provision of documents in tranches,
    - (iii) noted Ms Boyd was willing to defer matters of compliance in relation to paragraph (e) on the condition summary data be provided in the return to the order,
    - (iv) made claims of privilege over a 'whole "family"' of related documents,
  - (f) on 18 December 2024 a further return was received from The Cabinet Office which indicated that a further return of documents would be provided by 5 February 2025,
  - (g) on 20 December 2024, Ms Boyd disputed the validity of the claims of privilege on documents returned on 11 December 2024 from The Cabinet Office, with the Honourable Keith Mason AC KC appointed as Independent Legal Arbiter to evaluate and report as to the validity of the claim of privilege,
  - (h) on 6 March 2024, according to standing order 54, the Privileges Committee published the Independent Legal Arbiter's interim report on a sample of documents subject to the dispute, in which Mr Mason:

- (i) noted agreement between Ms Boyd, ministers and agencies over certain information which should not be made public, or where certain claims of privilege had been waived,
    - (ii) expressed a view that did not accept most aspects of the Department of Education's continued claims of privilege,
  - (i) on 12 March 2025, the Department of Education advised Ms Boyd directly of a delay to further tranches of documents in response to the order, and
  - (j) despite the interim report of the Independent Legal Arbiter and a commitment by the Deputy Premier, Minister for Education and Early Learning, and Minister for Western Sydney in a Budget Estimates hearing on 25 February 2025 to provide documents in response to the order, the remainder of the documents have not yet been provided.
- (2) That this House further notes that:
- (a) as agreed by Ms Boyd and the Department of Education, on 11 December 2024 a document of data relating to paragraphs (e)(v), (vi) and (ix) of the order was returned, entitled "Aggregated data related to Kids Academy Spring Farm (SE-40017213) (Affinity)" with explanatory text stating "The data below demonstrates one of the analytical approaches the ECEC-RA uses to understand a service's risk level and help identify patterns of non-compliance",
  - (b) at a Budget Estimates hearing on 25 February 2025, the data was used in questions to the Deputy Premier, Minister for Education and Early Learning, and Minister for Western Sydney, and attributed to one service as stated in the document title and explanatory text,
  - (c) on 25 February 2025, the Sydney Morning Herald similarly reported on the data, before issuing a correction, based on advice from the Department of Education, that the data instead related to Affinity as a provider and not a single service,
  - (d) on 12 March 2025, the Sydney Morning Herald published an article entitled "NSW Department of Education error", which stated that the Department had advised of a further correction, admitting that the data it had provided in response to the order of the House was incorrect, and actually related to all New South Wales service providers, and
  - (e) it was not until 12 March 2025, over two weeks after the Department first became aware that the document provided was incorrect, that a return was received from The Cabinet Office, advising of the mistake to the title and explanatory text of the document.
- (3) That this House:
- (a) notes the failure of the Government to comply with the order of the House regarding the early childhood education and care sector and to produce documents necessary for this House to undertake its function of scrutinising the actions of the executive government and holding it to account using its power to order the production of state papers,
  - (b) notes that delays in the provision of documents, and the provision of inaccurate information, to orders for papers undermines the integrity and efficacy of a critical power of the House, and
  - (c) reminds the Leader of the Government that, as the representative of the Government in this House, they are responsible for compliance with orders for papers passed by the Legislative Council.
- (4) That this House accordingly censures the Leader of the Government, as the representative of the Government in this House, for the Government's failure to comply with the order of the House regarding the early childhood education and care sector of 13 November 2024.

- (5) That, under standing order 52, there be laid upon the table of the House within 14 days of the date of passing of this resolution the following documents, excluding any documents previously returned under an order of the House, created since 1 January 2021 in the possession, custody or control of the Deputy Premier, Minister for Education and Early Learning and Minister for Western Sydney, the Department of Education, the Minister for Police and Counter-terrorism and Minister for the Hunter, the NSW Police Force, the Minister for Families and Communities and Minister for Disability Inclusion, or the Department of Communities and Justice relating to the early childhood education and care sector:
- (a) all documents relating to emergency action notices, prohibition notices, suspension notices, compliance notices, show cause notices or other notices or directions served on or regarding early childhood education and care (ECEC) providers under the Children (Education and Care Services) National Law (NSW) 2010 (the National Law),
  - (b) all written notices of decisions to cancel, suspend or continue approval of a service provider,
  - (c) any notifications to parents of children enrolled at an education and care service about the suspension or cancellation of provider approval,
  - (d) all documents relating to enforceable undertakings regarding early childhood education and care,
  - (e) all documents relating to suspected, alleged or actual criminal conduct, reportable incidents or allegation or risk of significant harm incidents, including:
    - (i) suspected criminal conduct in an ECEC provider towards a child,
    - (ii) alleged or actual criminal activity, including fraud, in relation to ECEC provision in New South Wales,
    - (iii) any investigations of suspected or proven criminal conduct towards a child or any other criminal activity related to New South Wales ECEC provision,
    - (iv) any actual or alleged offence of failing to notify certain circumstances or information, or failing to keep enrolment and other documents, as required by the National Law,
    - (v) any actual or alleged offence of using inappropriate discipline or of using an inappropriate person,
    - (vi) any actual or alleged offence relating to protection of children from harm and hazards,
    - (vii) any reports or notifications to the Department of Communities and Justice of risk of significant harm ('ROSH') for children while in the care of New South Wales ECEC providers,
    - (viii) any reports or notifications to the Office of Children's Guardian of reportable allegations against staff, volunteers or contractors working for a New South Wales ECEC provider,
    - (ix) any reports or notifications of reportable incidents to the National Quality Agenda IT System (NQA ITS) from New South Wales ECEC providers,
  - (f) all documents, including ministerial briefing documents, relating to death, serious injury or physical or sexual abuse of a child and a New South Wales ECEC facility or staff,
  - (g) all documents, including any briefs, relating to prosecutions of early childhood providers and educators, including in relation to:
    - (i) any recommendations for prosecution for conduct towards a child suspected to be criminal, or other criminal activity related to ECEC provision in New South Wales,
    - (ii) any recommendations for prosecution of criminal conduct against any New South Wales ECEC providers and or staff in such a facility,
    - (iii) any prosecution of any New South Wales ECEC providers or their employees or contractors,
  - (h) all documents relating to allegations of fraud, money laundering or scams regarding New South Wales ECEC provision,

- (i) all documents regarding actual or alleged wage underpayment in any New South Wales ECEC,
  - (j) all correspondence with the Productivity Commission or the Australian Competition and Consumer Commission relating to New South Wales ECEC providers,
  - (k) all documents, including emails and all forms of communication (other than standardised notices or circulars sent to all, or a category of, ECEC providers), sent between the department and representatives or employees of any of the following entities:
    - (i) G8 Education,
    - (ii) Guardian Child Care,
    - (iii) Affinity Education Group,
    - (vi) Busy Bees Early Learning Australia,
    - (v) Edge Early Learning,
    - (vi) Green Leaves,
    - (vii) Imagine Education,
    - (viii) Story House Early Learning,
    - (ix) Montessori Academy,
    - (x) Greentown Education,
    - (xi) Bright Horizons, also known as Only About Children,
    - (xii) Nido Early School,
    - (xiii) Mayfield,
    - (xiv) Sparrow Early Learning,
    - (xv) Fullshare Holdings,
    - (xvi) Journey Early Learning,
    - (xvii) Little Zak's Academy,
    - (xviii) Eden Academy,
    - (xix) Embark Early Education,
    - (xx) Stepping Stones,
    - (xxi) Explore and Develop,
    - (xxii) Aspire Early Learning,
    - (xxiii) Tallawong Childcare,
    - (xxiv) Tallawong Early Learning,
    - (xxv) Genius Childcare,
  - (l) all documents regarding compliance visits, spot checks or other compliance monitoring activities of ECEC providers,
  - (m) all documents relating to grants and payments made by the Childcare and Economic Opportunity Fund since its inception,
  - (n) all documents relating to grants and payments made under the Start Strong for Long Day Care program, and
  - (o) any legal or other advice regarding the scope or validity of this order of the House created as a result of this order of the House.
- (6) That, should the Leader of the Government fail to table documents in compliance with this resolution, it is open to this House to take all necessary action, including further censuring the Leader of the Government, adjudging the Leader of the Government guilty of contempt and suspending the Leader of the Government for whatever period necessary to cause compliance with this order of the House.

Debate ensued.

The House divided.

Ayes .....20  
 Noes .....15  
 Majority.....5

## AYES

Barrett  
Boyd  
Carter  
Cohn  
Fachrmann  
Fang (teller)  
Farlow

Higginson  
Hurst  
MacDonald  
Maclaren-Jones  
Martin  
Merton  
Mitchell

Munro  
Overall  
Rath (teller)  
Roberts  
Ruddick  
Ward

## NOES

Buckingham  
Buttigieg  
Donnelly  
Graham  
Houssos

Jackson  
Kaine  
Lawrence  
Mookhey  
Moriarty

Murphy (teller)  
Nanva (teller)  
Primrose  
Sharpe  
Suvaal

## PAIRS

Tudehope

D'Adam

Question resolved in the affirmative.