



New South Wales

# Childcare and Economic Opportunity Fund Regulation 2023

under the

Childcare and Economic Opportunity Fund Act 2022

Her Excellency the Governor, with the advice of the Executive Council, has made the following regulation under the *Childcare and Economic Opportunity Fund Act 2022*.

PRUE CAR, MP  
Minister for Education and Early Learning

## Explanatory note

The object of this regulation is to make provision about the following—

- (a) the members and procedure of the NSW Childcare and Economic Opportunity Fund Board (the **Board**),
- (b) the matters that a commissioned person must consider when conducting an independent review,
- (c) the information that is relevant information for the preparation of a market monitoring report and the persons that can be compelled to give relevant information,
- (d) the use and disclosure of information obtained for the preparation of a market monitoring report,
- (e) the delegation of functions by the Minister for Education and Early Learning, the Board or the Chairperson of the Board,
- (f) transitional arrangements for the financial year ending on 30 June 2023.

This regulation comprises or relates to matters set out in the *Subordinate Legislation Act 1989*, Schedule 3, namely matters of a machinery nature.

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## Childcare and Economic Opportunity Fund Regulation 2023

under the

Childcare and Economic Opportunity Fund Act 2022

### 1 Name of regulation

This regulation is the *Childcare and Economic Opportunity Fund Regulation 2023*.

### 2 Commencement

This regulation commences on the day on which it is published on the NSW legislation website.

### 3 Definition

In this regulation—

*the Act* means the *Childcare and Economic Opportunity Fund Act 2022*.

**Note**— The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this regulation.

### 4 Independent reviews and market monitoring reports—the Act, s 5

For the Act, section 5(7)(a), a commissioned person, when undertaking a review, must consider and report on—

- (a) matters the Minister directs the commissioned person to consider and report on, and
- (b) matters the commissioned person considers relevant, which may include the need for specialised or specific services for one or more of the following—
  - (i) rural and remote communities,
  - (ii) culturally and linguistically diverse persons and communities,
  - (iii) persons with disabilities,
  - (iv) Aboriginal and Torres Strait Islander persons,
  - (v) persons living in areas having a low quintile number in the most recent *Socio-Economic Indexes for Areas* published by the Australian Bureau of Statistics.

### 5 Requirement to give information and answer questions—the Act, s 7

- (1) For the Act, section 7(5)(e), relevant information includes information about the workforce in the childcare sector.
- (2) For the Act, section 7(6)(e), the following persons are prescribed—
  - (a) a government agency that is a person,
  - (b) the head of a government agency that is not a person.
- (3) In this section—

**government agency** means—

  - (a) a public authority constituted by or under an Act, or

- (b) a NSW government agency, or
- (c) a Public Service agency, or
- (d) a local council, or
- (e) a State owned corporation.

**6 Information obtained by commissioned person—the Act, s 8**

- (1) For the Act, section 8(3), the commissioned person is authorised to disclose information obtained under the Act, section 7 to the Education Secretary.
- (2) The Education Secretary is authorised to use and disclose the information for the purposes of the Act and this regulation.

**7 Members and procedure of Board—the Act, ss 9 and 10**

Schedule 1 sets out provisions about the members and procedure of the Board.

**8 Delegation—the Act, s 26**

For the Act, section 26(c), a member of staff of the Department of Education is prescribed.

**9 Transitional arrangements—the Act, Sch 2, s 1**

The following are not required for the financial year ending 30 June 2023—

- (a) an annual report under the Act, section 22(1),
- (b) an audit report of the Fund under the Act, section 22(2),
- (c) other annual reports for the Fund or the Board, including financial reports.

## Schedule 1 Members and procedure of Board

Section 7

### Part 1 General

#### 1 Definitions

In this schedule—

*independent appointed member* means an appointed member other than the appointed member referred to in the Act, section 10(2).

*member* means a member of the Board.

### Part 2 Constitution

#### 2 Part-time appointments

Appointed members hold office as part-time members.

#### 3 Remuneration

An independent appointed member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine for the member.

#### 4 Vacancy in office of appointed member

- (1) The office of an appointed member becomes vacant if the member—
  - (a) dies, or
  - (b) completes a term of office and is not reappointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or
  - (d) is removed from office by the Minister under this section, or
  - (e) is absent from 6 consecutive meetings of the Board of which reasonable notice has been given to the member personally or by post, except on leave granted by the Chairperson or unless the member is excused by the Chairperson for having been absent from those meetings, or
  - (f) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of the member's remuneration for their benefit, or
  - (g) becomes a mentally incapacitated person, or
  - (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more, or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.
- (2) The Minister may, with the concurrence of the Treasurer, remove an appointed member from office at any time.

#### 5 Filling of vacancy in office of appointed member

If the office of an appointed member becomes vacant, a person must, subject to the Act and this regulation, be appointed to fill the vacancy.

#### 6 Disclosure of pecuniary interests

- (1) This section applies if—

- (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Board, and
  - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter.
- (2) The member must, as soon as possible after becoming aware of the relevant facts, disclose the nature of the interest at a meeting of the Board.
- (3) A member may disclose at a meeting of the Board that the member—
  - (a) is a member, or is in the employment, of a specified company or other body, or
  - (b) is a partner, or is in the employment, of a specified person, or
  - (c) has some other specified interest relating to a specified company or other body or to a specified person.
- (4) The disclosure is a sufficient disclosure by the person of the nature of the interest in a matter relating to that company or other body and the person is not required to repeat the disclosure for later meetings of the Board.
- (5) Particulars of a disclosure made under this section must be recorded by the Board in a document kept for the purpose.
- (6) The document must be made available at all reasonable hours for inspection by any person on payment of the reasonable fee determined by the Board.
- (7) After a member has disclosed the nature of an interest in a matter, the member must not, unless the Minister or the Board otherwise determines—
  - (a) be present during a deliberation of the Board about the matter, or
  - (b) take part in a decision of the Board about the matter.
- (8) For the purposes of the making of a determination by the Board under subsection (7), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not—
  - (a) be present during a deliberation of the Board for the purpose of making the determination, or
  - (b) take part in the making of the determination by the Board.
- (9) A contravention of this section does not invalidate a decision of the Board.
- (10) This section applies to a member of a committee of the Board and the committee in the same way as it applies to a member of the Board and the Board.

## **7 Effect of certain other Acts**

- (1) The provisions of the *Government Sector Employment Act 2013* relating to the employment of Public Service employees do not apply to independent appointed members.
- (2) The following provisions in an Act or instrument do not operate to disqualify a person from holding an office and also being an appointed member—
  - (a) a provision requiring a person who is the holder of a specified office to devote the whole of the person's time to the duties of that office,
  - (b) a provision prohibiting the person from engaging in employment outside the duties of that office.

## **Part 3 Procedure**

### **8 General procedure**

The procedure for the calling of meetings of the Board and for the conduct of business at those meetings is, subject to this regulation, to be as determined by the Board.

### **9 Quorum**

- (1) The quorum for a meeting of the Board is a majority of its members for the time being.
- (2) The majority must include—
  - (a) the Chairperson, and
  - (b) at least 1 independent appointed member.

### **10 Presiding member**

- (1) The Chairperson, or, in the absence of the Chairperson, a person elected by the members of the Board who are present at a meeting of the Board, is to preside at a meeting of the Board.
- (2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

### **11 Voting**

A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present is the decision of the Board.

### **12 Transaction of business outside meetings or by electronic means**

- (1) The Board may, if it thinks fit, transact its business by the circulation of papers among all the members of the Board for the time being, and a written resolution approved in writing by a majority of those members is taken to be a decision of the Board made at a meeting of the Board.
- (2) The Board may, if it thinks fit, transact its business at a meeting at which members, or some members, participate by telephone or other electronic means, but only if a member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of—
  - (a) the approval of a resolution under subsection (1), or
  - (b) a meeting held in accordance with subsection (2),the Chairperson and each other member have the same voting rights as they have at an ordinary meeting of the Board.
- (4) A resolution approved under subsection (1) is, subject to this regulation, to be recorded in the minutes of the meetings of the Board.
- (5) Papers may be circulated among the members by electronic means for the purposes of subsection (1).